

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE YVONNE GONZALEZ ROGERS, JUDGE

CIARA NEWTON,)	
)	
PLAINTIFF,)	NO. C-17-3961 YGR
)	
VS.)	MONDAY, DECEMBER 10, 2018
)	
EQUILON ENTERPRISES LLC DBA)	OAKLAND, CALIFORNIA
SHELL OIL PRODUCTS US,)	
)	
)	JURY TRIAL
)	
DEFENDANT.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFF:

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SAN FRANCISCO, CALIFORNIA 94104
BY: SONYA L. SMALLETS, ESQUIRE
EVEN R. ETTHINGHOFF, ESQUIRE

DICKSON GEESMAN LLP
1999 HARRISON STREET, SUITE 1945
OAKLAND, CALIFORNIA 94612
BY: EMILY A. NUGENT, ESQUIRE

FOR DEFENDANT:

LAFAYETTE & KUMAGAI LLP
1300 CLAY STREET, SUITE 810
OAKLAND, CALIFORNIA 94612
BY: GARY T. LAFAYETTE, ESQUIRE
BARBARA L. LYONS, ESQUIRE

REPORTED BY:

DIANE E. SKILLMAN, CSR 4909, RPR, FCRR
OFFICIAL COURT REPORTER

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1 MONDAY, DECEMBER 10, 2018

8:00 A.M.

2 P R O C E E D I N G S

3 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

4 **THE COURT:** GOOD MORNING, EVERYONE.

5 **MR. LAFAYETTE:** GOOD MORNING.

6 **MS. NUGENT:** GOOD MORNING, YOUR HONOR.

7 **THE CLERK:** CALLING CIVIL ACTION 17-3961, NEWTON
8 VERSUS EQUILON. COUNSEL, PLEASE STATE YOUR APPEARANCES.

9 **MS. NUGENT:** EMILY NUGENT, SONYA SMALLETS, AND EVAN
10 ETTINGHOFF FOR THE PLAINTIFF, AND MS. NEWTON IS ALSO HERE WITH
11 US THIS MORNING.

12 **THE COURT:** GOOD MORNING, EVERYONE.

13 **MS. SMALLETS:** GOOD MORNING.

14 **MS. NUGENT:** WE ALSO HAVE OUR PARALEGAL DENISE KWAN.

15 **THE COURT:** WONG?

16 **MS. NUGENT:** KWAN. K-W-A-N.

17 **THE COURT:** DENISE, D-E-N-I-S-E.

18 **MS. NUGENT:** YOU GOT IT.

19 **THE COURT:** ALL RIGHT. GOOD MORNING. MR. LAFAYETTE,
20 GOOD MORNING.

21 **MR. LAFAYETTE:** GOOD MORNING. GARY LAFAYETTE,
22 LAFAYETTE AND KUMAGAI, APPEARING ON BEHALF OF DEFENDANT,
23 EQUILON. WITH ME IS BARBARA LYONS AND CLIENT IS
24 REPRESENTATIVE, CHRISTINE LAYNE.

25 THANK YOU, YOUR HONOR.

1 **THE COURT:** GOOD MORNING. OKAY. YOUR LIST. WE WILL
2 START, MS. NUGENT, WITH YOU.

3 **MS. NUGENT:** PICKING UP THE 2016 CALENDAR, WE ALSO
4 HAVE A FLASH DRIVE FOR YOUR HONOR WITH PLAINTIFF'S EXHIBITS.
5 WE DID NOT TALK ABOUT DEFENDANT'S FINANCIAL INFORMATION LODGED
6 WITH THE COURT AND THEN AN ISSUE ABOUT EXHIBIT 70.

7 **THE COURT:** SO, ALL RIGHT. AND MR. LAFAYETTE?

8 **MR. LAFAYETTE:** I DON'T HAVE ANY ISSUES.

9 **THE COURT:** ALL RIGHT. SO THERE IS A PROBLEM WITH
10 THE 2016 CALENDAR STILL?

11 **MS. NUGENT:** OH NO, NO, NO. I WANTED TO TRY TO SEE
12 IF THIS IS ONE THAT WOULD BE ACCEPTABLE ON THE ELMO. I
13 THOUGHT THAT WOULD MAYBE BE THE BEST WAY.

14 (DOCUMENT HANDED TO COUNSEL.)

15 **MR. LAFAYETTE:** THAT'S FINE.

16 (DISPLAYED ON SCREEN.)

17 **THE COURT:** ALL RIGHT. THAT'S FINE. YOU ALL SHOULD
18 FIGURE OUT HOW TO USE THAT, SO YOU CAN PLAY WITH THAT AND
19 FIGURE IT OUT. OKAY. SO, THERE IS AN AGREEMENT ON THE NATURE
20 OF THE CALENDAR. AND THEN YOU SAID YOU HAVE A THUMB DRIVE FOR
21 ME WITH THE EXHIBITS?

22 **MS. NUGENT:** I DON'T KNOW IF DEFENDANT WAS PLANNING
23 ON GIVING YOU A THUMB DRIVE WITH DEFENDANT'S EXHIBITS ON IT.
24 SO, THIS HAS JUST THE PLAINTIFF'S EXHIBITS.

25 **MR. LAFAYETTE:** WE WERE MAKING -- WE PRODUCED THE

1 EXHIBITS. IF THE COURT WOULD LIKE A THUMB DRIVE, WE WILL GIVE
2 A THUMB DRIVE WITH ALL THE EXHIBITS ON IT. WE WILL ALSO BE
3 PROVIDING BINDERS FOR EACH ONE OF THE WITNESSES WHO'S CALLED
4 WITH THE EXHIBITS WE INTEND TO USE DURING THE EXAMINATION.

5 **THE COURT:** ALL RIGHT. IF YOU CAN GIVE ME THE THUMB
6 DRIVE, I LOAD THEM. SOMETIMES ISSUES COME UP. AND I MEAN, I
7 DO HAVE THE ONE HERE BUT ALSO I'VE GOT LAW CLERKS WHO LISTEN
8 ELECTRONICALLY AND, IF THEY NEED TO TAKE -- YOU KNOW, IF THEY
9 NEED TO LOOK AT SOMETHING, IT IS EASIER FOR THEM TO PULL IT UP
10 ELECTRONICALLY.

11 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR. WE WILL DO
12 THAT.

13 **THE COURT:** AND THEN THE QUESTION ABOUT THE EXHIBITS
14 THAT WERE LODGED?

15 **MS. NUGENT:** WE DIDN'T TALK ABOUT IT ON FRIDAY. I
16 UNDERSTOOD THAT IS THE DATE FOR DEFENDANT TO LODGE FINANCIAL
17 INFORMATION.

18 **THE COURT:** I BELIEVE IT WAS LODGED.

19 **MS. NUGENT:** OKAY.

20 **THE COURT:** IS THAT RIGHT, FRANCES?

21 **MR. LAFAYETTE:** THAT'S RIGHT, YOUR HONOR.

22 **THE COURT:** FRANCES, YOU HAVE THEM? THE LODGED
23 EXHIBITS FROM FRIDAY.

24 **THE CLERK:** THE WHAT EXHIBITS?

25 **THE COURT:** THE LODGED EXHIBITS WITH THE FINANCIALS.

1 DO YOU HAVE THOSE?

2 **THE CLERK:** YES, I HAVE IT. I LOCKED IT UP IN MY
3 DRAWER ON AT MY DESK. SO, I GOT THEM ON FRIDAY.

4 **THE COURT:** WE DID GET THEM. THEY ARE SEALED. WE
5 HAVEN'T SEEN THEM BUT WE HAVE THEM.

6 OKAY. SO THAT'S GREAT. CAN SOMEONE TELL ME WHO WE ARE
7 EXPECTING TODAY?

8 **MS. NUGENT:** YES. FIRST, WE WILL BE CALLING ERIC
9 PEREZ.

10 **THE CLERK:** OKAY.

11 **MS. NUGENT:** FOLLOWED BY BILL WESSELMAN.
12 W-E-S-S-E-L-M-A-N. AND THEN ODEMENA. HIS FIRST NAME IS
13 EKELEMU. E-K-E-L-E-M-U. HIS LAST NAME IS EKELEMU.
14 E-K-E-L-E-M-U.

15 **THE COURT:** OKAY.

16 **MS. NUGENT:** AND THEN CHRISTINE LAYNE, WHO IS HERE
17 WITH US.

18 **THE COURT:** AND DO WE HAVE DEPOSITIONS FOR EACH OF
19 THOSE?

20 **MS. NUGENT:** YOU DO. MR. PEREZ AND MR. (SIC) LAYNE
21 BUT NOT FOR MR. WESSELMAN OR MR. EKELEMU. BUT WE WILL HAVE
22 WITNESS BINDERS FOR ALL FOUR.

23 **THE COURT:** OKAY. TERRIFIC. IF THERE IS NOTHING
24 ELSE, WE WILL GET STARTED. MY OPENING INSTRUCTIONS SHOULDN'T
25 TAKE BUT ABOUT 20 MINUTES OR SO, AND THEN WE WILL MOVE

1 STRAIGHT INTO OPENINGS.

2 **MS. NUGENT:** THERE WAS ONE OTHER ISSUE EXHIBIT 70 I
3 WANTED TO RAISE NOW.

4 **THE COURT:** OKAY.

5 **MS. NUGENT:** THAT IS THE PLAINTIFF'S PERSONNEL FILE.
6 AND WE WERE PLANNING ON JUST HAVING IT AUTHENTICATED BY DURING
7 MS. LAYNE DURING HER EXAMINATION.

8 IT WAS -- THE WAY IT WAS PRESENTED, THOUGH, WAS TO -- ONE
9 OF THE UNION GUYS, CHRIS PALACIO, IN THE GRIEVANCE PROCESS.
10 IT HAS NOTHING TO DO WITH THE GRIEVANCE BUT THAT'S JUST THE
11 COVER LETTER SAYS SOMETHING ABOUT THE GRIEVANCE.

12 I JUST WANTED TO TAKE UP THAT ISSUE NOW SINCE THE PARTIES
13 HAVE ALREADY AGREED THAT WE ARE NOT GOING TO BE DISCUSSING
14 EITHER THE GRIEVANCE OR ANY INVESTIGATIONS. IT IS JUST THE
15 PERSONNEL FILE FOR THE AUTHENTICATION.

16 **MR. LAFAYETTE:** ARE YOU PROPOSING TO TAKE OFF THE
17 COVER LETTER? I'M LOOKING AT IT, AND IT LOOKS LIKE IT HAS THE
18 COVER LETTER --

19 **THE CLERK:** YOU'RE OFF THE MIKE.

20 **MR. LAFAYETTE:** I AM SORRY.

21 IT LOOKS LIKE IT JUST CONTAINS THE COVER LETTER FROM THE
22 UNION ON THE FRONT. SO LET'S TALK -- I'LL TALK WITH HER, YOUR
23 HONOR. I THINK WE CAN REMOVE A COUPLE OF PAGES FROM IT, AND
24 THEN I DON'T HAVE A PROBLEM WITH IT.

25 **THE COURT:** ALL RIGHT. WHY DON'T YOU GUYS TALK. WE

1 WILL STAND IN RECESS UNTIL THE JURY GETS HERE. THANK YOU.

2 (RECESS TAKEN AT 8:08 A.M.; RESUMED AT 8:34 A.M.)

3 **THE CLERK:** REMAIN SEATED. COURT IS IN SESSION.

4 **THE COURT:** OKAY. JURY IS HERE. LET'S CALL THEM IN.
5 GOOD MORNING. WELCOME BACK.

6 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

7 **THE CLERK:** YOU CAN GO AHEAD AND BE SEATED.

8 **THE COURT:** ALL RIGHT. SO WE ARE MISSING -- DO WE
9 REMEMBER HOW TO DO THIS? MR. LUNA, YOU ARE IN THE FIRST SEAT.
10 THEN JOSHUA IS IN THE SECOND SEAT, VERONICA IS IN THE THIRD
11 SEAT. NO. UP FRONT, VERONICA. YOU ARE UP FRONT.

12 **THE CLERK:** THEN YOU SHOULD HAVE THE BINDER THAT
13 MATCHES.

14 **THE COURT:** VERONICA, YOU COME UP FRONT.

15 **THE CLERK:** YOU WILL GET -- YOU WILL GET YOUR ORDER
16 ALL SET. YOUR BINDER MATCHES. EVERYBODY HAS A NUMBER THAT
17 MATCHES?

18 **THE COURT:** NOW, WE ARE ALL SET? YEAH? OKAY.

19 YOU MAY ALL BE SEATED, AND WE WILL GO BACK ON THE RECORD.
20 THE RECORD WILL REFLECT WE ARE BACK ON THE RECORD. ALL THE
21 JURORS ARE HERE. THEY ARE NOW IN THEIR PROPER SEAT. OKAY?
22 SO, IT WON'T TAKE YOU VERY LONG FOR YOU TO START FILING IN IN
23 THE RIGHT ORDER, SO THAT YOU'RE NOT JUMPING ALL OVER EACH
24 OTHER.

25 WELCOME BACK. I HOPE YOU HAD A GREAT WEEKEND. I HAVE A

1 FEW INSTRUCTIONS FOR YOU THIS MORNING TO GET STARTED. YOU
2 HAVE THERE ON YOUR SEATS YOUR BINDERS. SO THOSE BINDERS WILL
3 HAVE PAPER FOR YOU TO TAKE NOTES, IF YOU SO CHOOSE. AT THE
4 BEGINNING OF EVERY DAY, YOU WILL RECEIVE PICTURES OF THE
5 WITNESSES WHO TESTIFIED THE DAY BEFORE TO HELP YOU REMEMBER
6 WHO SAID WHAT.

7 IN THE POCKET IS -- ARE SOME BLANK NOTES IN CASE YOU --
8 AND WE ARE GOING TO TALK ABOUT THOSE DURING MY INSTRUCTIONS IN
9 CASE YOU HAVE QUESTIONS.

10 THERE IS A VERY IMPORTANT PAGE. THE VERY FIRST PAGE OF
11 YOUR BINDER REMINDS YOU ABOUT ALL MY DO NOTS. I USED TO
12 ACTUALLY PUT THEM ON THE COVER OF THE BINDERS AND REALIZED NO
13 ONE EVER LOOKED AT THEM. I FIGURED I'D TRY THE FIRST PAGE.
14 EVERY TIME YOU OPEN UP THAT BOOK, YOU WILL SEE THE REMINDERS
15 OF ALL THE DO NOTS, WHICH ARE PARTICULARLY IMPORTANT NOW THAT
16 WE LIVE IN AN ELECTRONIC AGE.

17 ALL RIGHT. LET'S GET STARTED.

18 SO YOU ARE NOW THE JURY IN THIS CASE, AND IT IS MY DUTY TO
19 INSTRUCT YOU ON THE LAW. IT IS YOUR DUTY TO FIND THE FACTS
20 FROM ALL THE EVIDENCE IN THE CASE. TO THOSE FACTS, YOU WILL
21 APPLY THE LAW AS I GIVE IT TO YOU, AND YOU MUST FOLLOW THE LAW
22 AS I GIVE IT TO YOU WHETHER YOU LIKE IT OR NOT OR AGREE WITH
23 IT OR NOT. YOU MUST NOT BE INFLUENCED BY ANY PERSONAL LIKES
24 OR DISLIKES, OPINIONS, PREJUDICES OR SYMPATHY. THAT MEANS YOU
25 MUST DECIDE THE CASE SOLELY ON THE EVIDENCE BEFORE YOU, AND

1 YOU WILL RECALL THAT YOU TOOK AN OATH TO DO SO.

2 AT THE END OF THE TRIAL I WILL GIVE YOU FINAL
3 INSTRUCTIONS. IT IS THOSE FINAL INSTRUCTIONS THAT WILL GOVERN
4 YOUR DUTIES AND DELIBERATIONS.

5 PLEASE DO NOT READ INTO THESE INSTRUCTIONS OR ANYTHING I
6 MAY SAY OR DO TO SUGGEST THAT I HAVE AN OPINION REGARDING THE
7 EVIDENCE OR WHAT YOUR VERDICT SHOULD BE.

8 TO HELP YOU FOLLOW THE EVIDENCE, I'LL GIVE YOU A VERY
9 BRIEF SUMMARY OF THE POSITIONS OF THE PARTIES. THE PLAINTIFF
10 IS CIARA NEWTON. THE DEFENDANT IS EQUILON ENTERPRISES, LLC.
11 DEFENDANT DOES BUSINESS AS SHELL OIL PRODUCTS U.S. SO
12 THROUGHOUT THE TRIAL YOU MAY HEAR THE DEFENDANT REFERRED TO AS
13 SHELL OIL, OR SHELL, OR EQUILON, IT'S ALL THE DEFENDANT.
14 OKAY?

15 THE PLAINTIFF ASSERTS THAT EMPLOYEES OF THE DEFENDANT
16 HARASSED HER BECAUSE OF HER GENDER. THE DEFENDANT
17 DISCRIMINATED AGAINST HER BECAUSE OF HER GENDER. THE
18 DEFENDANT RETALIATED AGAINST HER FOR REPORTING HARASSMENT OR
19 DISCRIMINATION.

20 THE DEFENDANT FAILED TO TAKE REASONABLE STEPS TO PREVENT
21 DISCRIMINATION, HARASSMENT OR RETALIATION, AND THE DEFENDANT
22 DISCHARGED HER FOR REPORT REG SAFETY ISSUES. THE PLAINTIFF
23 HAS THE BURDEN TO PROVE THESE CLAIMS. THE DEFENDANT DENIES
24 THOSE CLAIMS AND ALSO CONTENTS THAT PLAINTIFFS CLAIM FOR
25 GENDER-BASED HARASSMENT IS TIME BARRED. THAT SHE FAILED TO

1 REASONABLY AVAIL HERSELF OF THE DEFENDANTS INTERNAL COMPLAINT
2 PROCESS WHILE EMPLOYED, THAT SHE FAILED TO TAKE REASONABLE
3 STEPS TO MINIMIZE HER DAMAGES AFTER TERMINATION, AND THAT
4 DEFENDANT DISCHARGED HER AND WOULD IN ANY EVENT HAVE
5 DISCHARGED HER FOR UNSATISFACTORY JOB PERFORMANCE.

6 WHEN A PARTY HAS THE BURDEN OF PROVING A CLAIM OR
7 AFFIRMATIVE DEFENSE BY WHAT WE CALL A PREPONDERANCE OF THE
8 EVIDENCE, IT MEANS THAT YOU MUST BE PERSUADED BY THE EVIDENCE,
9 THAT THE CLAIM OR AFFIRMATIVE DEFENSE IS OR PROBABLY IS MORE
10 PROBABLY TRUE THAN NOT. THAT IS WHAT WE TALKED ABOUT LAST
11 WEEK, MORE PROBABLY TRUE THAN NOT. YOU SHOULD BASE YOUR
12 DECISION ON ALL OF THE EVIDENCE REGARDLESS OF WHICH PARTY
13 PRESENTED IT.

14 AT THE END OF THE TRIAL, I WILL INSTRUCT YOU IF A PARTY
15 HAS THE BURDEN OF PROVING ANY CLAIM OR DEFENSE BY WHAT WE CALL
16 CLEAR AND CONVINCING EVIDENCE. THAT MEANS THAT A PARTY MUST
17 PRESENT EVIDENCE THAT LEAVES YOU WITH A FIRM BELIEF OR
18 CONVICTION THAT IT IS HIGHLY PROBABLE THAT THE FACTUAL
19 CONTENTIONS OF THE CLAIM OR DEFENSE ARE TRUE, AND THIS IS
20 OBVIOUSLY A HIGHER STANDARD THAN THE BURDEN -- THAN A
21 PREPONDERANCE OF THE EVIDENCE BUT IS NOT AS GREAT AS THE
22 CRIMINAL BURDEN WHICH IS PROOF BEYOND A REASONABLE DOUBT. BUT
23 I'LL EXPLAIN ALL OF THAT TO YOU AT THE END OF THE TRIAL.

24 SO WHAT IS THE EVIDENCE THAT YOU CAN CONSIDER? THE
25 EVIDENCE YOU CAN CONSIDER IN DECIDING WHAT THE FACTS ARE

1 CONSISTS OF THE FOLLOWING: ONE, THE SWORN TESTIMONY OF THE
2 WITNESSES; THAT IS, WHOEVER SITS THERE IN THAT CHAIR, RAISE
3 THEIR HAND, THEY TAKE AN OATH, THEIR TESTIMONY CAN BE
4 CONSIDERED. THE EXHIBITS THAT I ADMIT INTO EVIDENCE ADMIT
5 INTO EVIDENCE FOR YOUR CONSIDERATION. ANY FACTS TO WHICH THE
6 PARTIES HAVE AGREED, AND THERE ARE A FEW AND I WILL EXPLAIN
7 THOSE TO YOU LATER. AND ANY FACTS THAT I INSTRUCT YOU TO
8 ACCEPT AS TRUE. THAT'S THE EVIDENCE.

9 SO WHAT IS NOT EVIDENCE? IN REACHING YOUR VERDICT,
10 CERTAIN THINGS ARE NOT EVIDENCE AND YOU MAY BE CONSIDER THEM
11 IN DECIDING WHAT THE FACTS ARE. I WILL LIST THEM FOR YOU.

12 ONE, ARGUMENTS AND STATEMENTS OF THE LAWYERS ARE NOT
13 EVIDENCE. THE LAWYERS ARE NOT WITNESSES. WHAT THEY SAY IN
14 THEIR OPENING STATEMENTS, CLOSING ARGUMENTS, AND AT OTHER
15 TIMES DURING THE TRIAL IS INTENDED TO HELP YOU UNDERSTAND AND
16 INTERPRET THE EVIDENCE, BUT IT IS NOT EVIDENCE. RIGHT? THEY
17 ARE NOT TAKING AN OATH. YOU WILL NEVER SEE THE LAWYERS TAKE
18 AN OATH. WHAT THEY SAY IS NOT EVIDENCE.

19 IF THE FACTS ARE AS YOU REMEMBER THEM DIFFER FROM THE WAY
20 IN WHICH THE LAWYERS HAVE STATED THEM, YOUR MEMORY OF THE
21 EVIDENCE AND OF THE FACTS CONTROLS.

22 THE QUESTIONS AND THE OBJECTIONS BY THE LAWYERS ARE NOT
23 EVIDENCE. LAWYERS HAVE A DUTY TO THEIR CLIENTS TO OBJECT WHEN
24 THEY BELIEVE A QUESTION IS IMPROPER UNDER THE RULES OF
25 EVIDENCE AND YOU SHOULD NOT BE INFLUENCED BY THE OBJECTION OR

1 MY RULING ON IT.

2 TESTIMONY THAT IS STRICKEN OR EXCLUDED OR THAT YOU ARE
3 INSTRUCTED TO DISREGARD IS NOT EVIDENCE AND YOU MAY NOT
4 CONSIDER IT. IN ADDITION, THERE MAY BE SOME EVIDENCE RECEIVED
5 FOR A VERY LIMITED PURPOSE, AND I WILL INSTRUCT YOU HOW AND
6 WHEN TO CONSIDER THAT EVIDENCE FOR THAT LIMITED PURPOSE AND
7 YOU MUST DO SO AND MAY NOT CONSIDER THE EVIDENCE FOR ANY OTHER
8 PURPOSE. SOMETIMES SOMETHING IS SAID AND THEN I HAVE TO
9 STRIKE IT. WHAT I DO WHEN I AM TAKING NOTES IS I LITERALLY
10 STRIKE THROUGH IT AS A REMINDER THAT I CAN'T THINK ABOUT THAT.
11 ANYTHING YOU HAVE SEEN OR HEARD WHEN COURT IS NOT IN SESSION
12 IS NOT EVIDENCE. YOU ARE TO DECIDE THE CASE SOLELY ON THE
13 EVIDENCE RECEIVED.

14 SO EVIDENCE CAN BE WHAT WE CALL DIRECT OR CIRCUMSTANTIAL.
15 DIRECT EVIDENCE IS DIRECT PROOF OF A FACT, SUCH AS THE
16 TESTIMONY BY A WITNESS ABOUT WHAT THAT WITNESS PERSONALLY SAW
17 OR HEARD OR DID. CIRCUMSTANTIAL EVIDENCE IS PROOF OF ONE OR
18 MORE FACTS FROM WHICH YOU MIGHT FIND ANOTHER FACT.

19 YOU SHOULD CONSIDER BOTH KINDS OF EVIDENCE. THE LAW MAKES
20 NO DISTINCTION BETWEEN THE WEIGHT TO BE GIVEN TO EITHER
21 DIRECT -- EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. IT IS FOR
22 YOU TO DECIDE HOW MUCH WEIGHT TO GIVE ANY EVIDENCE.

23 LET ME GIVE YOU AN EXAMPLE. IF YOU WAKE UP IN THE MORNING
24 AND YOU SEE THAT THE SIDEWALK IS WET, YOU MIGHT CONCLUDE FROM
25 THAT FACT THAT YOU SAW THAT IT WAS WET, THAT IT RAINED DURING

1 THE NIGHT. NOW, OTHER EVIDENCE MIGHT EXIST, SUCH AS A TURNED
2 ON GARDEN HOSE. THAT WOULD PROVIDE A DIFFERENT EXPLANATION
3 FOR WHY THE SIDEWALK WAS WET. BEFORE YOU DECIDE THAT A FACT
4 HAS BEEN PROVED BY CIRCUMSTANTIAL EVIDENCE, YOU SHOULD
5 CONSIDER ALL THE EVIDENCE IN THE LIGHT OF REASON, EXPERIENCE
6 AND COMMON SENSE.

7 YOU MAY CONSIDER THE ABILITY OF EACH PARTY TO PROVIDE
8 EVIDENCE. IF A PARTY PROVIDED WEAKER EVIDENCE WHEN IT COULD
9 HAVE PROVIDED STRONGER EVIDENCE, YOU MAY DISTRUST THE WEAKER
10 EVIDENCE. IF A PARTY FAILED TO EXPLAIN OR DENY EVIDENCE
11 AGAINST HER OR IT WHEN SHE OR IT COULD HAVE REASONABLY BEEN
12 EXPECTED TO HAVE DONE SO BASED UPON WHAT SHE OR IT KNEW, YOU
13 MAY CONSIDER HER OR ITS FAILURE TO EXPLAIN OR DENY IN
14 EVALUATING THAT EVIDENCE.

15 AGAIN, IT IS UP TO YOU TO DECIDE THE MEANING AND
16 IMPORTANCE OF THE FAILURE TO EXPLAIN OR DENY EVIDENCE AGAINST
17 A PARTY.

18 THERE ARE RULES OF EVIDENCE THAT CAN CONTROL WHAT CAN BE
19 RECEIVED INTO EVIDENCE AND, WHEN A LAWYER ASKS A QUESTION OR
20 OFFERS AN EXHIBIT INTO EVIDENCE AND THE OTHER LAWYER THINKS IT
21 IS NOT PERMITTED BY THE RULES OF EVIDENCE, THAT LAWYER MAY
22 OBJECT. IF I SUSTAIN THE OBJECTION, THE QUESTION CANNOT BE
23 ANSWERED AND THE BE EXHIBIT NOT RECEIVED. IF I SUSTAIN AN
24 OBJECTION TO A QUESTION, YOU MUST IGNORE THAT QUESTION AND
25 MUST NOT GUESS WHAT YOU THINK THE ANSWER MIGHT HAVE BEEN.

1 SOMETIMES I MAY ORDER THAT EVIDENCE BE STRICKEN FROM THE
2 RECORD AND YOU MUST IGNORE THAT. IN DECIDING THE CASE,
3 OBVIOUSLY, YOU CANNOT CONSIDER STRICKEN HAD EVIDENCE. IN
4 DECIDING THE FACTS OF THIS CASE, YOU MAY HAVE TO DECIDE WHAT
5 TESTIMONY TO BELIEVE OR NOT TO BELIEVE. YOU HAVE THE RIGHT AS
6 JURORS TO BELIEVE EVERYTHING A WITNESS SAYS OR JUST PART OF IT
7 OR NONE OF IT. I RAISED THIS DURING VOIR DIRE LAST WEEK.
8 I'LL REPEAT IT NOW. IN CONSIDERING A WITNESS'S TESTIMONY, YOU
9 MAY TAKE INTO ACCOUNT THE FOLLOWING: ONE, THE OPPORTUNITY AND
10 ABILITY OF THE WITNESS TO SEE OR HEAR OR KNOW THE THINGS THAT
11 THEY ARE TESTIFYING TO. TWO, THE WITNESS'S MEMORY. THREE,
12 THE WITNESS'S MANNER WHILE TESTIFYING. FOUR, THE WITNESS'S
13 INTEREST IN THE OUTCOME OF THE INDICATION CASE, IF ANY. FIVE,
14 THE WITNESS'S BIAS OR PREJUDICE, IF ANY. SIX, WHETHER OTHER
15 EVIDENCE CONTRADICTED THE WITNESS'S TESTIMONY.

16 SEVEN, THE REASONABLENESS OF THE WITNESS'S TESTIMONY IN
17 LIGHT OF ALL THE OTHER EVIDENCE. AND EIGHT, ANY OTHER FACTOR
18 THAT YOU BELIEVE BEARS ON BELIEVABILITY.

19 SOMETIMES A WITNESS MAY SAY SOMETHING THAT IS NOT
20 CONSISTENT WITH SOMETHING ELSE HE OR SHE SAID. SOMETIMES
21 DIFFERENT WITNESSES HAVE DIFFERENT VERSIONS OF WHAT HAPPENED.
22 PEOPLE OFTEN FORGET THINGS OR MAKE MISTAKES IN WHAT THEY
23 REMEMBER. ALSO TWO PEOPLE MAY SEE THE SAME EVENT BUT REMEMBER
24 IT DIFFERENTLY.

25 YOU MAY CONSIDER THESE DIFFERENCES BUT DO NOT DECIDE THAT

1 TESTIMONY IS UNTRUE JUST BECAUSE IT DIFFERS FROM OTHER
2 TESTIMONY.

3 HOWEVER, IF YOU DECIDE THAT A WITNESS HAS DELIBERATELY
4 TESTIFIED UNTRUTHFULLY ABOUT SOMETHING BEING IMPORTANT, YOU
5 MAY CHOOSE NOT TO BELIEVE ANYTHING THAT WITNESS SAID.

6 ON THE OTHER HAND, IF YOU THINK THE WITNESS TESTIFIED
7 UNTRUTHFULLY ABOUT SOME THINGS BUT TOLD THE TRUTH ABOUT
8 OTHERS, YOU MAY ACCEPT THE PART THAT YOU THINK IS TRUE AND
9 IGNORE THE REST.

10 THE WEIGHT OF THE EVIDENCE AS TO A FACT DOES NOT
11 NECESSARILY DEPEND ON THE NUMBER OF WITNESSES WHO TESTIFY.
12 WHAT IS IMPORTANT IS HOW BELIEVABLE THE WITNESSES WERE AND HOW
13 MUCH WEIGHT YOU THINK THEIR TESTIMONY DESERVES.

14 I URGE YOU TO PAY CLOSE ATTENTION TO THE TRIAL TESTIMONY
15 AS IT IS GIVEN. DURING DELIBERATIONS YOU WILL NOT HAVE A
16 TRANSCRIPT OF THE TRIAL TESTIMONY. SO LET ME ASK YOU THIS:
17 WHO REMEMBERS EVERYTHING I TOLD YOU LAST FRIDAY DURING VOIR
18 DIRE? I'M SURE YOU REMEMBER SOME OF IT. BUT IF I ASKED YOU
19 QUESTIONS, WOULD YOU REALLY REMEMBER ALL THOSE DETAILS? SO
20 YOU MIGHT THINK ABOUT TAKING SOME NOTES.

21 NOW, YOU CAN TAKE NOTES TO HELP YOU REMEMBER THE EVIDENCE
22 AND, IF YOU DO TAKE NOTES, KEEP THEM TO YOURSELF UNTIL YOU GO
23 INTO THE JURY ROOM TO DECIDE THE CASE. BUT DON'T LET
24 NOTE-TAKING ULTIMATELY DISTRACT YOU. THAT IS, YOU NEED TO
25 LOOK AT THE WITNESS AND HEAR THE WITNESS AND THINK ABOUT

1 THINGS COLLECTIVELY AS WELL.

2 WHEN YOU LEAVE AT THE END OF EACH DAY, YOU SHOULD LEAVE
3 YOUR NOTES IN THE JURY ROOM. NO ONE WILL READ THEM. IT IS A
4 SECURED SPACE. WHETHER OR NOT YOU TAKE NOTES, YOU SHOULD RELY
5 ON YOUR MEMORY OF THE EVIDENCE. NOTES ARE ONLY TO ASSIST YOUR
6 MEMORY AND YOU SHOULD NOT BE OVERLY INFLUENCED BY YOUR NOTES
7 OR THOSE OF OTHER JURORS.

8 YOU ARE ALLOWED IN MY COURTROOM. NOT ALL COURTROOMS BUT
9 IN MY COURTROOM, YOU ARE ALLOWED TO PROPOSE WRITTEN QUESTIONS
10 TO WITNESSES AFTER THE LAWYERS HAVE COMPLETED THEIR
11 QUESTIONING OF THE WITNESSES.

12 YOU MAY PROPOSE QUESTIONS IN ORDER TO CLARIFY THE
13 TESTIMONY. BUT YOU ARE NOT TO EXPRESS ANY OPINION ABOUT THE
14 WITNESS, AND YOU ARE NOT TO ARGUE WITH THE WITNESS IN YOUR
15 QUESTIONS.

16 IF YOU PROPOSE A QUESTION, REMEMBER THAT YOUR ROLE IS TO
17 BE THE NEUTRAL FACT FINDER, NOT AN ADVOCATE FOR EITHER SIDE.
18 BEFORE I EXCUSE A WITNESS, I WILL OFFER YOU THE OPPORTUNITY TO
19 WRITE THEM DOWN AND PROVIDE THEM TO ME IN THE FORM THAT'S IN
20 YOUR BOOK. I WILL REVIEW THE QUESTION WITH THE ATTORNEYS TO
21 DETERMINE WHETHER IT IS LEGALLY PROPER. THERE ARE SOME
22 QUESTIONS THAT I DO NOT PERMIT AND I WILL NOT ASK. SOME WHERE
23 I HAVE CHANGED THE WORDING SUBMITTED BY THE JUROR TO MAKE IT
24 APPROPRIATE. THIS MIGHT HAPPEN EITHER DUE TO THE RULES OF
25 EVIDENCE OR SOME OTHER REASON IT OR IT MAY HAPPEN BECAUSE THE

1 QUESTION IS EXPECTED TO BE ANSWERED LATER IN THE TRIAL.

2 IF I DO NOT ASK A QUESTION OR IF I REPHRASE IT, DO NOT
3 SPECULATE AS TO THE REASONS. AND DO NOT GIVE UNDUE WEIGHT TO
4 THE QUESTIONS YOU OR OTHER JURORS PROPOSE.

5 YOU SHOULD EVALUATE THE ANSWERS TO THOSE QUESTIONS IN THE
6 SAME MANNER THAT YOU EVALUATE ALL OTHER EVIDENCE. BY GIVING
7 YOU THE OPPORTUNITY TO PROPOSE QUESTIONS I'M NOT SUGGESTING OR
8 REQUESTING THAT YOU DO SO. IT IS OFTEN THE CASE THAT A LAWYER
9 IS NOT ASKED A QUESTION BECAUSE IT IS OBJECTIONABLE OR BECAUSE
10 A LATER WITNESS MAY ADDRESS THE TOPIC.

11 FROM TIME TO TIME, IT MAY BE NECESSARY FOR ME TO TALK WITH
12 THE LAWYERS OUT OF YOUR HEARING OR HAVING A CONFERENCE ON THE
13 SIDE OF THE BENCH OR CALL A RECESS. PLEASE UNDERSTAND WHILE
14 YOU ARE WAITING, WE ARE WORKING. THE PURPOSE OF THESE
15 CONFERENCES IS NOT TO KEEP RELEVANT INFORMATION FROM YOU BUT
16 TO DECIDE HOW CERTAIN ARE EVIDENCE IS TO BE TREATED UNDER THE
17 RULES OF EVIDENCE AND TO AVOID ANY CONFUSION OR ERROR.

18 WE WILL DO WHAT WE CAN TO KEEP THESE -- THE NUMBER AND
19 LENGTH OF THESE CONFERENCES TO A MINIMUM. I MAY NOT ALWAYS
20 GRANT ATTORNEYS' REQUEST FOR A CONFERENCE. WE MEET BEFORE YOU
21 START YOUR DAY WITH US AND WE MEET AFTER, SO I TRY TO TAKE
22 CARE OF THESE THINGS WHEN YOU ARE NOT HERE. DO NOT CONSIDER
23 THE GRANTING OR DENYING OF A CONFERENCE AS ANY INDICATION OF
24 MY OPINION OF THE CASE OR WHAT YOUR VERDICT SHOULD BE.

25 TRIALS PROCEED IN THE FOLLOWING WAY. AFTER I'M DONE HERE

1 EACH SIDE WILL MAKE AN OPENING STATEMENT. REMEMBER, AN
2 OPENING STATEMENT IS NOT EVIDENCE. IT'S BEEN SIMPLY AN
3 OUTLINE TO HELP YOU UNDERSTAND WHAT THE PARTY EXPECTS THE
4 EVIDENCE WILL SHOW.

5 A PARTY IS NOT REQUIRED TO MAKE AN OPENING STATEMENT,
6 ALTHOUGH HERE I BELIEVE BOTH WILL. THE PLAINTIFF WILL THEN
7 PRESENT EVIDENCE AND COUNSEL FOR THE DEFENSE WILL
8 CROSS-EXAMINE. THEN THE DEFENDANT WILL PRESENT ITS EVIDENCE
9 AND COUNSEL FOR THE PLAINTIFF MAY CROSS-EXAMINE. AFTER ALL
10 THE EVIDENCE IS PRESENTED, I'LL INSTRUCT YOU AGAIN ON THE LAW
11 THAT APPLIES TO THIS CASE. THE ATTORNEYS WILL MAKE CLOSING
12 ARGUMENTS, AND THEN YOU WILL GO TO THE JURY ROOM TO DELIBERATE
13 ON YOUR VERDICT.

14 NOW, ONE OF THE THINGS I LIKE TO DO IS EXPLAIN TO
15 JURORS -- I USE THE FOLLOWING ANALOGY AND THAT IS KIND OF LIKE
16 A PUZZLE. ANY OF YOU LIKE TO DO A PUZZLES? I'M A BIG
17 PUZZLER. RIGHT NOW, WE HAVE A PUZZLE BOX. THERE IS
18 ABSOLUTELY NOTHING IN IT. THE PUZZLES -- THE PIECES OF THE
19 PUZZLE LIKE THE EVIDENCE. WHAT IS GOING TO HAPPEN WITH THE
20 OPENINGS IS EACH SIDE IS GOING TO TELL YOU WHAT THEY THINK
21 THAT COVER OF THE PUZZLE BOX LOOKS LIKE. THEY ARE GOING TO
22 TELL YOU WHAT THEY THINK THAT PICTURE IS. AS WE GO THROUGH
23 THE TRIAL, EVERYTHING WE PUT INTO THAT BOX ARE LIKE THE PIECES
24 OF THE PUZZLE. ALL THAT TESTIMONY, ALL THOSE DOCUMENTS, WE
25 ARE GOING TO KEEP THEM IN THAT BOX. RIGHT NOW MUCH THE BOX IS

1 EMPTY.

2 AT THE END OF THE TRIAL, THEY ARE GOING TO GO BACK AND
3 ARGUE AND TELL YOU WHAT ALL THAT EVIDENCE THAT WE PUT IN THAT
4 BOX LOOKS LIKE. YOU GET TO DECIDE WHAT IT LOOKS LIKE. YOU
5 GET TO PUT ALL THE PIECES OF THE PUZZLE TOGETHER TO TELL US
6 WHAT YOU THINK THE FACTS ARE.

7 NOW IT'S REALLY IMPORTANT THAT NOTHING GOES INTO THAT BOX
8 THAT NOT IN THIS COURTROOM. RIGHT? BECAUSE EVERYBODY GETS TO
9 HEAR EVERYTHING, ALL THOSE VARIOUS PIECES THAT GO INTO THAT
10 BOX. AND THAT'S WHY I HAVE INSTRUCTED YOU BEFORE ABOUT NOT
11 DOING RESEARCH AND ANALYSIS AND YOUR OWN KIND OF INDEPENDENT
12 WORK ON THIS CASE, BUT I'LL REMIND YOU AGAIN ABOUT THAT.

13 BUT IT IS IMPORTANT FOR EVERYBODY TO HAVE A FAIR TRIAL,
14 THAT WE ALL KNOW WHAT WE ARE ALL LOOKING AT IN TERMS OF
15 PUTTING TOGETHER THE PIECES OF THE PUZZLE IN THIS CASE. OKAY?
16 ALL RIGHT. SO NOW I'M GOING TO INVITE MS. NUGENT TO GIVE HER
17 OPENING STATEMENT.

18 **MS. NUGENT:** THANK YOU, YOUR HONOR.

19 **THE COURT:** YOU'RE WELCOME.

20 **OPENING STATEMENT**

21 (DISPLAYED ON SCREEN.)

22 **MS. NUGENT:** CIARA NEWTON HAD BEEN A PROCESS OPERATOR
23 AT SHELL'S REFINERY IN MARTINEZ FOR ABOUT EIGHT MONTHS WHEN
24 SHE ARRIVED TO WORK FOR WHAT SHE EXPECTED TO BE A REGULAR
25 MONDAY MORNING. SHE NOTICED THAT THERE WERE A LOT MORE

1 COLLEAGUES IN THE AREA THAN THERE USUALLY WERE WHEN SHE GOT TO
2 WORK. BUT IT DIDN'T STRIKE HER AS TOO ODD, AT LEAST NOT YET.

3 SHE DID WHAT SHE USUALLY DID. SHE MET WITH THE PERSON WHO
4 WORKED THE SHIFT BEFORE HER AT NIGHT AND GOT A ROUTINE
5 BRIEFING. THINGS THAT SHE WOULD HAVE TO LOOK OUT FOR, THINGS
6 TO KEEP AN EYE ON, AND THEN SHE RETURNED TO HER DESK.

7 AND ON IT SHE FOUND A STICKER, THE KIND OF STICKER THAT
8 PEOPLE WEAR ON HARD HATS AT THE REFINERY. AND I'M GOING TO
9 SHOW IT TO YOU, BUT, BEFORE I DO, I DO WANT TO APOLOGIZE. THE
10 WORDS ON IT ARE OFFENSIVE, BUT IT IS IMPORTANT TO KNOW WHAT
11 MS. NEWTON ENCOUNTERED AT WORK. THIS WAS THE STICKER, IF YOUR
12 PUSSY HURTS, JUST STAY HOME.

13 SHE LOOKED AROUND TO SEE IF THERE WAS A STICKER ON ANYONE
14 ELSE'S DESK. THERE WASN'T. SHE COULD FEEL ALL THOSE
15 COLLEAGUES STARING AT HER, WAITING FOR A REACTION. SHE HAD
16 BEEN SINGLED OUT, AGAIN.

17 SHE TALKED WITH HER COLLEAGUE BILL WESSELMAN. YOU WILL
18 HEAR FROM HIM AND THEY DISCUSSED THE STICKER, AND HE TOO WAS
19 OFFENDED WHEN HE SAW IT. HE TOLD HER TAKE A PHOTO OF IT, SHOW
20 IT TO OUR SUPERVISOR. AND SO SHE DID. SHE SHOWED IT TO TWO
21 SUPERVISORS. ONE WHO WAS TWO LEVELS ABOVE HER. HIS NAME IS
22 ERIC PEREZ AND YOU WILL HEAR FROM HIM TODAY, AND SHE ALSO
23 SHOWED IT TO HER DIRECT SUPERVISOR AT THAT TIME. HIS NAME IS
24 RICHARD METCALF. WHEN MR. METCALF FOUND OUT ABOUT THE STICKER
25 HE SAID COME INTO MY OFFICE. AND THEN HE ASKED HER, ARE YOU

1 EASILY OFFENDED? SHE WAS OFFENDED. SHE TOLD HIM, I JUST WANT
2 TO GET ALONG WITH EVERYBODY AND DO MY JOB.

3 MR. WESSELMAN WHO ENCOURAGED HER TO TAKE A PHOTO OF THE
4 STICKER COMES FROM A LAW ENFORCEMENT BACKGROUND, AND HE
5 EXPECTED THAT SHELL WOULD INVESTIGATE WHO BROUGHT IT IN.
6 SHELL NEVER DID. WE STILL DON'T KNOW WHO PUT THAT STICKER ON
7 MS. NEWTON'S DESK.

8 YOU'LL HEAR IN THIS CASE THAT, INSTEAD OF CONDUCTING ANY
9 INVESTIGATION, INSTEAD OF ENSURING MS. NEWTON WAS TREATED LIKE
10 HER COLLEAGUES, HELD TO THE SAME STANDARDS, YOU WILL HEAR THAT
11 INSTEAD OF ENSURING THAT HER RIGHTS WERE PROTECTED LIKE ALL OF
12 HER COLLEAGUES, SHELL INSTEAD CHOSE TO ENGAGE IN A CAMPAIGN TO
13 DRIVE HER OUT OF THE JOB AND, IN THE END, THEY SUCCEEDED.

14 WE'RE NOT JUST HERE ABOUT A STICKER THOUGH. THAT WAS JUST
15 ONE EVENT IN A WHOLE CAMPAIGN OF EVENTS, AND IT IS ALL OF
16 THAT, THAT BRINGS US HERE TODAY.

17 LET'S GO BACK AND TAKE A LOOK AT WHO THE PARTIES ARE. IN
18 THE INSTRUCTIONS YOU JUST HEARD, THERE WAS SOME OF THIS
19 INFORMATION. THE DEFENDANT, AS THE JUDGE TOLD YOU, IS EQUILON
20 ENTERPRISES, DOING BUSINESS AS SHELL. FOR OUR PURPOSES THEY
21 ARE THE SAME. THE REFINERY IS IN MARTINEZ, AND THIS IS THE
22 PICTURE OF IT.

23 THE EVENTS IN THIS CASE PRIMARILY TOOK PLACE BETWEEN
24 JANUARY AND SEPTEMBER 2016. NOW, I WANT TO INTRODUCE YOU TO
25 THE PLAINTIFF, CIARA NEWTON. SHE WAS BORN IN BERKELEY, RAISED

1 IN PINOLE. SHE KNEW PEOPLE WHO WORKED IN REFINERIES,
2 INCLUDING HER DAD. HE WAS A PIPE FITTER AND AN IRON WORKER.
3 HER BROTHER-IN-LAW WORKS IN THE REFINERY NOW. SHE WORKED AS A
4 DENTAL ASSISTANT FOR SEVERAL YEARS BUT THERE WASN'T A LOT
5 OF -- IT WASN'T A PATH FOR HER REALLY TO MAKE THE BETTER LIFE
6 THAT SHE REALLY WANTED.

7 AND SO SHE DECIDED TO JOIN A VOCATIONAL PROGRAM THAT IS
8 RUN OUT OF THE CONTRA COSTA COUNTY, IN CONJUNCTION WITH THE
9 CHEVRON REFINERY. AND IN THAT PROGRAM YOU'RE GOING TO HEAR
10 FROM HER INSTRUCTOR, MICHAEL JOYCE. SHE LEARNED -- ESPECIALLY
11 FOR SOMEONE LIKE HER WITHOUT A BACKGROUND IN THIS TYPE OF
12 INDUSTRY, SHE LEARNED THE KNOWLEDGE, THE TRAINING, THE
13 FUNDAMENTAL SKILLS NECESSARY TO GET ONE OF THESE ENTRY LEVEL
14 OPERATOR JOBS AT A REFINERY. THEY ARE SOUGHT AFTER. IT IS
15 HARD TO GET A FOOT IN THE DOOR THERE, BUT THE VOCATIONAL
16 PROGRAM GAVE HER THE SKILLS THAT SHE NEEDED.

17 YOU WILL HEAR FROM HER TRAINER THAT SHE WAS AN EXCEPTIONAL
18 STUDENT. SHE HAD THE HIGHEST GPA IN THE CLASS. HER
19 BROTHER-IN-LAW WAS IN THAT CLASS. SHE HAD A HIGHER GPA THAN
20 HIM, AND HE DESCRIBED HER AS EXCEPTIONAL.

21 ONE IMPORTANT PART OF ABOUT THAT CLASS THAT SHE TOOK IS
22 THE CURRICULUM FOCUSED A LOT ON SAFETY BECAUSE THINGS CAN GO
23 WRONG IN REFINERIES AND YOU WILL HEAR THAT. AS PART OF THE
24 TRAINING THAT MR. JOYCE GAVE THE TRAINEES, HE TOLD THEM WHAT
25 COULD HAPPEN IF THEY WERE THINGS LIKE COMPLACENCY IN THE

1 REFINERY, AND THAT HAS A SPECIFIC MEANING IN THAT INDUSTRY.
2 COMPLACENCY MEANS IF EQUIPMENT IS BROKEN AND IT DOESN'T GET
3 FIXED, IF SOMETHING HAPPENS AND IT DOESN'T GET REPORTED, THAT
4 TYPE OF COMPLACENCY CAN LEAD TO SERIOUS THINGS DOWN THE LINE,
5 AND SO THINGS NEED TO BE DEALT WITH. SO SHE LEARNED ABOUT
6 THAT.

7 SHE SAW VIDEOS OF WHAT COULD HAPPEN WHEN THINGS WENT
8 WRONG, WHEN THERE WAS COMPLACENCY, AND SHE TOOK THAT SAFETY
9 MINDSET WITH HER TO THE REFINERY AT SHELL. SHE ACTUALLY GOT
10 THE JOB AT SHELL BEFORE SHE FINISHED THE VOCATIONAL PROGRAM.

11 SHE INTERVIEWED IN LATE BE 2015. YOU WILL HEAR THERE ONE
12 OF THE MEN AT SHELL WHO INTERVIEWED HER. HE WILL TELL YOU
13 THAT SHE WAS A VERY GOOD CANDIDATE. HE DESCRIBES HER AS
14 DRIVEN, INTELLIGENT AND SHE ACTUALLY GOT ONE OF THE HIGHER
15 SCORES ON THE ENTRANCE EXAM THERE AT SHELL. IT WAS A
16 MECHANICAL APTITUDE EXAM.

17 MS. NEWTON STARTED AT SHELL AS A NEW HIRE IN JANUARY 2016.
18 THIS IS A PHOTO OF HER NEW HIRE CLASS. YOU WILL NOTICE THAT
19 THERE ARE MOSTLY MEN IN THE CLASS, 18 MEN AND FOUR WOMEN. THE
20 ONLY PERSON IN THIS PHOTO WHO IS NOT ONE OF THE NEW HIRES IS
21 THE FELLOW ALL THE WAY TO THE LEFT. THE BURGUNDY SHIRT ON.
22 HE WAS ONE OF THE TRAINERS, JEFF ANDRE. YOU MAY HEAR FROM
23 HIM. MS. NEWTON IS IN THE BACK THERE, AND MR. WESSELMAN IS IN
24 FRONT OF HER IN THE LEATHER JACKET.

25 YOU WILL ALSO HEAR FROM A COUPLE OF THE OTHER MEN IN THIS

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1 NEW HIRE CLASS. YOU WILL HEAR ALL 18 MEN PASSED PROBATION.
2 TWO OUT OF THE FOUR WOMEN WERE FIRED. AFTER THE PORTION OF
3 CLASSROOM TRAINING AT SHELL, LASTED SIX WEEKS, ALL OF THE NEW
4 OPERATORS OR NEW HIRES WERE PUT INTO DIFFERENT DEPARTMENTS,
5 AND MS. NEWTON WAS AS ASSIGNED TO OPERATION CENTRAL, AND
6 YOU'LL HEAR IT REFERRED TO OPCEN. RIGHT? OPERATION CENTRAL.

7 AND WHEN SHE FIRST STARTED THERE, SHE TRAINED UNDER
8 SOMEONE NAMED JEFF FISCHER. AND YOU'RE GOING TO HEAR THAT
9 MR. FISCHER WAS NOT HAPPY THAT MS. NEWTON HAD BEEN ASSIGNED TO
10 HIS DEPARTMENT. HE TOLD HER, WOMEN DON'T LAST. WOMEN DON'T
11 MAKE IT IN OPCEN. BUT MS. NEWTON WAS MAKING IT. SHE WAS
12 MAKING IT EVEN THOUGH HE STEREOTYPED HER AS NOT MECHANICALLY
13 INCLINED, EVEN THOUGH HE SAID, SOME OF YOU WOULDN'T BE HERE IF
14 I WAS DOING THE HIRING.

15 I SAID THAT YOU'RE GOING TO HEAR FROM A COUPLE OF OTHER
16 MEN IN HER NEW HIRE CLASS AND THEY WILL DESCRIBE WHAT IT WAS
17 LIKE TRAINING UNDER JEFF FISCHER AND WHAT THAT ENVIRONMENT WAS
18 LIKE.

19 IN EARLY MARCH 2016, ABOUT TWO MONTHS INTO MS. FISCHER'S
20 (SIC) JOB AT SHELL, HER DAD UNEXPECTEDLY DIED. THEY WERE VERY
21 CLOSE. SHE MISSED ABOUT FIVE DAYS OF WORK. AND WHEN SHE CAME
22 BACK, SHE WAS BE STILL TRAINING UNDER MR. FISCHER. AND HE
23 TOLD HER, I DON'T HAVE TIME TO CATCH YOU UP. SHE WAS ON HER
24 OWN. BUT SHE CAUGHT UP.

25 BY LATE MAY, SHE HAD PASSED ALL OF SHELL'S TESTS; THE

1 WRITTEN TEST, THE FIELD TEST, EVERYTHING THAT SHE NEEDED TO
2 QUALIFY AS AN OPERATOR ON HER UNIT. THAT MEANS THAT SHE HAD
3 TO HAVE OTHER OPERATORS DIRECTLY OBSERVE HER WORKING WITH THE
4 EQUIPMENT AND SIGNING OFF ON HER ABILITY TO DO THINGS. IT
5 MEANT PASSING ALL OF THE TESTS. AND THERE IS ONE CHECKLIST,
6 AND YOU ARE GOING TO SEE IT, THAT THE OPERATORS HAVE. AND
7 ONCE YOU GET ALL OF THE SIGNATURES, YOU'RE QUALIFIED. SO BY
8 THE END OF MAY, SHE HAD ALL THOSE SIGNATURES. AND ONE OF THE
9 BENEFITS OF BEING QUALIFIED IS THAT YOU COULD SWITCH SHIFTS
10 WITH OTHER QUALIFIED OPERATORS. HAPPENS IN A LOT OF
11 INDUSTRIES. IF YOU BOTH AGREE, YOU CAN SWITCH YOUR SHIFTS.

12 SHE HAD ARRANGED TO DO THAT, SO SHE COULD BE IN A FRIEND'S
13 WEDDING OVER MEMORIAL DAY WEEKEND. YOU ARE GOING TO HEAR THAT
14 ON THE LAST SHIFT THAT SHE HAD BEFORE THAT WEEKEND, BEFORE SHE
15 LEFT THE REFINERY, MR. FISCHER TOOK HER COMPLETED QUALIFIED
16 PAPERWORK AND HE WHITED OUT ONE OF THE SIGNATURES OF ONE OF
17 THE OPERATORS WHO HAD QUALIFIED HER. HE DIDN'T WHITE OUT THE
18 SAME SIGNATURES ON HER MALE COWORKERS' QUALIFICATION
19 PAPERWORK. SHE WAS SINGLED OUT.

20 I TALKED A LITTLE ABOUT SAFETY IN THE VOCATIONAL PROGRAM.
21 YOU'RE GOING TO HEAR ALSO ABOUT SAFETY AT THE REFINERY.
22 THERE'S NO QUESTION; SAFETY IS CRITICAL. SHELL TRAINS ITS
23 OPERATORS TO BE SAFE. DURING PROBATION, SHELL GIVES ITS
24 EMPLOYEES PROGRESS REPORTS USUALLY EVERY 30 DAYS, AND EVERY
25 PROGRESS REPORT THAT MS. NEWTON GOT SAID SOMETHING ABOUT HER

1 SAFETY CONSCIOUSNESS OR HER HABITS.

2 IT'S ALSO IMPORTANT TO NOTE WHEN YOU LOOK AT THE PROGRESS
3 REPORTS IN THIS CASE THAT EVERYONE HAS A QUESTION AT THE END,
4 AND IT SAYS, BASED ON YOUR RECOMMENDATION -- IN OTHER WORDS,
5 BASED ON WHAT THE SUPERVISOR HAS SEEN OF THIS PERSON -- WOULD
6 YOU RECOMMEND THEY CONTINUE AS AN EQUILON EMPLOYEE? AND EVERY
7 PROGRESS REPORT SHE GOT SAID YES.

8 LET'S TAKE A LOOK AT THE PROGRESS REPORTS, SOME EXCERPTS
9 FROM THE PROGRESS REPORTS WHEN IT CAME TO SAFETY.

10 THE FIRST ONE SHE GOT IN 30 DAYS, THAT WAS GIVEN BY JEFF
11 ANDRE. THAT'S THE FELLOW IN THE BURGUNDY SHIRT THAT WE SAW IN
12 THE PHOTO. HE TALKS ABOUT HER BEGINNING TO UNDERSTAND THE
13 SAFETY RULES OF THE REFINERY, AND THEY HAVE SAFETY MEETINGS IN
14 THE MORNINGS WHERE SOMEONE PRESENTS A TOPIC. AND SHE HAD
15 PRESENTED A TOPIC IN THOSE FIRST 30 DAYS WHICH TALKED ABOUT
16 COMPLACENCY AND MAINTAINING AWARENESS. IT'S LIKELY THAT SHE
17 REMEMBERED THAT FROM THE VOCATIONAL PROGRAM.

18 60 DAYS, SAME THING. COMMENTS ABOUT MS. NEWTON BEING
19 SAFE. ALTHOUGH NEW TO REFINING, SHE WAS ATTENTIVE AND EAGER
20 TO LEARN.

21 90 DAYS. THIS WILL BECOME IMPORTANT AS YOU HEAR SOME OF
22 THE EVIDENCE COMING IN IN THE CASE. ALWAYS THE FIRST ONE TO
23 PUT ON GOGGLES. THAT IS FROM JEFF FISCHER. HE ALSO
24 RECOMMENDED SHE REMAIN AS AN EQUILON EMPLOYEE.

25 150 DAYS. VERY SAFETY MINDED. RECOMMEND SHE CONTINUE AS

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1 AN EMPLOYEE. THAT WAS ALSO FROM SOMEONE ELSE YOU WILL HEAR
2 FROM, CAMERON CURRAN.

3 180 DAYS, THAT WAS THE -- AGAIN FROM CAMERON CURRAN. SHE
4 FOLLOWS PRESCRIBED SAFETY STANDARDS THAT IS THE CATEGORY SHE
5 FELL INTO. THERE WAS AN X MARKED NEXT TO THAT ON THAT
6 PROGRESS REPORT.

7 AND THEN THE LAST PROGRESS REPORT SHE GOT, 240 DAYS, FROM
8 RICHARD METCALF. HE SAID SHE IS LEARNING TO BE A SAFE
9 OPERATOR, STARTS HER WORK PROMPTLY AT THE BEGINNING OF HER
10 SHIFT, AND COMPLETES HER WORK. IT'S IMPORTANT TO NOTE THAT
11 ALTHOUGH HE RECOMMENDED THAT SHE CONTINUE AS AN EMPLOYEE ON
12 THAT PROGRESS REPORT, SHE WAS FIRED A WEEK AFTER THAT.

13 MS. NEWTON WAS NOT ONLY CONSCIOUS ABOUT SAFETY, SHE WAS
14 PROACTIVE IN MAKING SURE THAT SHE WAS FOLLOWING HER TRAINING.
15 I WILL GIVE YOU ONE EXAMPLE.

16 IN JUNE OF 2016, SHE DISCOVERED THAT THERE WAS A SIGHT
17 GLASS ON A TANK THAT CONTAINED SULFURIC ACID THAT WASN'T
18 WORKING. THE SIGHT GLASS INDICATES THE LEVEL OF LIQUID IN A
19 TANK. SO IT'S IMPORTANT THAT IT WORKS BECAUSE YOU DON'T WANT
20 THE TANK TO OVERFILL AND THEN HAVE A SPILL OF THIS ACID.

21 SO WHEN SHE REALIZED THAT IT WASN'T WORKING, SHE NOTED
22 THAT IN HER SHIFT REPORT FOR THE DAY AND WAS HOPING THAT IT
23 GOT FIXED. SHE SAW IT WASN'T WORKING A FEW TIMES, BUT IT
24 DIDN'T GET FIXED.

25 AND SURE ENOUGH, ON JULY 4TH, SHE FOUND THERE HAD BEEN A

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1 SPILL OF SULFURIC ACID ON THAT VERY TANK. THE SPILL HAD
2 HAPPENED ON A SHIFT BEFORE HERS, BUT WHEN SHE FOUND OUT ABOUT
3 IT, IT HADN'T BEEN WRITTEN DOWN ANYWHERE. IT HADN'T BEEN
4 LOGGED IN ANY OF THE REPORTS THAT SHELL USES FOR THOSE TYPES
5 OF EVENTS.

6 SO SHE FOUND OUT ABOUT IT, SHE WENT TO INVESTIGATE IT.
7 SHE LOOKED AT THE SHELL MANUAL TO SEE HOW TO DEAL WITH THAT
8 TYPE EVENT. SHE PUT IT IN HER SHIFT REPORT, AND THEN SHE WENT
9 TO GO TALK TO HER SUPERVISOR AT THAT TIME, CAMERON CURRAN.

10 WHEN CAMERON CURRAN FOUND OUT SHE HAD PUT IT IN HER SHIFT
11 REPORT, HE WAS UPSET. HE TOLD HER, YOU'RE GOING TO GET THE
12 GUYS IN TROUBLE. YOU NEED TO HANDLE THIS OPERATOR TO
13 OPERATOR. IF YOU DON'T, YOU'RE GOING TO GET THE REPUTATION OF
14 A RAT OR A TATTLETALE.

15 MS. NEWTON WAS TRYING TO FOLLOW HER TRAINING. BUT YOU ARE
16 GOING TO HEAR THAT SHE GOT THE MESSAGE, THAT THE GUYS WATCH
17 OUT FOR EACH OTHER, AND THAT SHE WAS A THREAT TO THAT.

18 SHORTLY AFTER THAT, BOTH MR. CURRAN AND MS. NEWTON HAD A
19 REGULARLY SCHEDULED WEEK OFF. THAT IS HOW THE ROTATIONAL
20 SCHEDULES WORK AT THE REFINERY. THEY CAME BACK AFTER THEIR
21 WEEK OFF AND IT WAS MID-JULY, AND AT THAT POINT MS. NEWTON HAD
22 REPORTED TO MR. CURRAN FOR ABOUT TWO MONTHS.

23 I TALKED ABOUT THE PROGRESS LOGS THAT SHELL HAS EVERY 30
24 DAYS OR SO. THERE IS ALSO SOMETHING CALLED A POSITIVE
25 DISCIPLINE LOG OR PD LOG, OR PD FILE. YOU ARE GOING TO HEAR

1 THAT TERMINOLOGY IN THE CASE. IT IS ALSO SOMETHING WHERE
2 SHELL CAN DOCUMENT THE PROGRESS OF ITS OPERATORS.

3 AND IN THE TWO MONTHS THAT MS. NEWTON HAD BEEN REPORTING
4 TO MR. CURRAN BEFORE THE SULFURIC ACID SPILL, HE HAD NEVER
5 MADE ANY ENTRY ON HER PD LOG; NOTHING POSITIVE, NOTHING
6 NEGATIVE, NOTHING NEUTRAL. JUST NOTHING. BUT AFTER THEY
7 RETURNED FROM THAT WEEK OFF, HE WROTE HER UP SEVEN TIMES IN
8 THREE DAYS.

9 HE WROTE HER UP FOR THINGS LIKE ADMITTING SHE DIDN'T KNOW
10 HOW TO DO SOMETHING, FOR SHOWING HER HOW TO DO SOMETHING FOR
11 THE FIRST TIME. IN ONE INSTANCE, HE SAID SHE WAS SUPPOSED TO
12 WORK A CERTAIN DAY THAT SHE DIDN'T KNOW SHE WAS SUPPOSED TO
13 WORK. AND IN THAT CONVERSATION, THEY LEARNED SHE HAD NEVER
14 BEEN GIVEN ACCESS TO THE ONLINE SCHEDULE. SO, HE SET HER UP ON
15 THAT.

16 MS. NEWTON DID NOT KNOW OVER THOSE THREE DAYS HE WAS
17 PAPERING HER FILE. HE NEVER TOLD HER HE WAS PUTTING THOSE
18 THINGS IN THERE. WHEN SHE FOUND OUT, SHE SAID, I'M NOT BEING
19 TREATED THE SAME AS THE OTHER OPERATORS. I'M NOT BEING
20 TREATED THE SAME AS THE GUYS.

21 MR. CURRAN THEN WROTE TO HIS BOSS, ERIC PEREZ, AND HE SAID
22 IN REFERENCE MS. NEWTON, SHE'S PUSHING HARD ON THE EQUALITY
23 THING. THAT WAS JULY 29TH. A FEW DAYS LATER THERE WAS A
24 MEETING BETWEEN MR. PEREZ, MS. NEWTON, A REPRESENTATIVE FROM
25 HR, AND A REPRESENTATIVE FROM THE UNION, TWO OF THEM, ONE OF

1 WHICH YOU ARE GOING TO HEAR FROM.

2 AND DURING THAT MEETING MS. NEWTON TALKED ABOUT ALL OF THE
3 TREATMENT THAT SHE HAD ENDURED. SHE TALKED ABOUT WHAT
4 HAPPENED UNDER JEFF FISCHER. THEY ALSO TALKED ABOUT THESE
5 ENTRIES IN THE PD LOG. AND YOU ARE GOING TO HEAR THAT HR
6 DIDN'T DO ANYTHING IN RESPONSE TO WHAT WAS SAID IN THAT
7 MEETING. MR. PEREZ DIDN'T DO ANYTHING.

8 AS I SAID, THAT MEETING WAS ON AUGUST 2ND. SHORTLY AFTER
9 THAT, SHE STARTED REPORTING TO HER LAST SUPERVISOR THERE,
10 RICHARD METCALF. AND EVEN THOUGH SHE HAD BEEN SUBJECTED TO
11 HOSTILITY, SHE WANTED TO WORK THERE, SHE WANTED TO WORK HARD
12 AND SHE WAS LEARNING HER JOB. AND MR. METCALF TOLD HER, LOOK,
13 YOU HAVE A CLEAN SLATE WITH ME.

14 AND THEN THE STICKER. ERIC PEREZ TOLD HER THAT HE WOULD
15 INVESTIGATE. THE ONLY THING HE DID IS SEND OUT AN EMAIL TO
16 THE SHIFT TEAM LEADERS, PEOPLE LIKE MR. CURRAN, MR. METCALF.
17 AND HE SAID, THE STICKER IS INAPPROPRIATE. TELL YOUR TEAMS
18 BUT DO NOT PUT ANYTHING IN THEIR PD LOGS ABOUT IT. AND THAT
19 WAS IT.

20 A FEW WEEKS LATER, MS. NEWTON FOLLOWED UP WITH MR. PEREZ.
21 HE TOLD HER TO EMAIL HIM, FOLLOW UP ON THE INVESTIGATION. SHE
22 DID. SEPTEMBER 17TH, SHE SAYS, HI, ERIC. FOLLOWING UP ON
23 YOUR INVESTIGATION ON MY COMPLAINTS ABOUT BEING SINGLED OUT.
24 MR. PEREZ IGNORED HER. HE DID FORWARD HER EMAIL TO HR. BUT
25 THAT WAS IT.

1 A FEW DAYS LATER, MS. NEWTON GOT HER FINAL PROGRESS REPORT
2 FROM MR. METCALF. THAT WAS THE 240-DAY REPORT WE SAW AN
3 EXCERPT FROM. AND MR. METCALF MET WITH HER ABOUT IT. THEY
4 SAT DOWN. HE EXPLAINED TO HER, AGAIN, YOU'RE RIGHT WHERE YOU
5 NEED TO BE. YOU HAD A CLEAN SLATE WITH ME. MAYBE YOU SHOULD
6 START TRAINING TO QUALIFY IN YOUR SECOND JOB IN THE UNIT.

7 SHE DIDN'T KNOW IF SHE WAS READY FOR THAT YET, BUT HE WAS
8 VERY ENCOURAGING TO HER. AFTER THEY HAD THE MEETING, HE THEN
9 SENT THAT PROGRESS REPORT OFF TO MR. PEREZ.

10 SIX HOURS LATER, MR. PEREZ WROTE TO MR. METCALF AND HE
11 SAID, WE NEED TO ALIGN OUR RATINGS. SO THEY HAD A MEETING.
12 MR. METCALF, MR. PEREZ, AND ANOTHER SUPERVISOR THAT YOU WILL
13 HEAR FROM. MR. METCALF WAS UP FOR A PROMOTION AT THE TIME.
14 MR. PEREZ WAS ONE OF THE PEOPLE WHO WAS GOING TO BE WEIGHING
15 IN ON THAT PROMOTION. MR. CURRAN WAS UP FOR THE SAME
16 PROMOTION DURING THAT SUMMER. AND AFTER THAT MEETING
17 MR. METCALF CHANGED HIS REVIEW. THEY NEVER GAVE THE CHANGED
18 REVIEW TO MS. NEWTON. WE ONLY SAW IT IN THIS LITIGATION. YOU
19 WILL BE ABLE TO SEE THEM AND COMPARE THEM, BUT THE MOST
20 SIGNIFICANT CHANGE WAS TO THAT LAST QUESTION WE'VE TALKED
21 ABOUT.

22 UNDER MR. METCALF, THE QUESTION, BASED ON YOUR KNOWLEDGE
23 OF THE EMPLOYEE'S PERFORMANCE TO-DATE, SHOULD THE INDIVIDUAL
24 CONTINUE AS AN EQUILON EMPLOYEE? METCALF ORIGINALLY MET WITH
25 MS. NEWTON, THE REPORT SAID YES AND THEN, AFTER MEETING WITH

1 MR. PEREZ, HE CHECKED YES AND NO.

2 (DISPLAYED ON SCREEN.)

3 SHELL MADE SURE THAT MS. NEWTON DIDN'T MAKE IN OPCEN.
4 THEY PUSHED HER OUT THE DOOR. SHELL'S COUNSEL MAY GET UP HERE
5 AND TELL YOU THAT MS. NEW NEVER REPORTED BEING TREATED
6 DIFFERENTLY OR BEING SINGLED OUT, BUT YOU WILL SEE IN THEIR
7 OWN WRITINGS THAT THAT IS NOT TRUE.

8 THEY MAY TELL YOU THAT THE COMPANY COULDN'T INVESTIGATE
9 ANYTHING THAT SHE SAID BECAUSE SHE WOULDN'T GIVE THEM NAMES OF
10 PEOPLE SHE THOUGHT WERE BEING TREATED BETTER THAN HER.
11 MR. PEREZ WILL ADMIT THOUGH THEY DIDN'T NEED THAT INFORMATION
12 FROM HER TO INVESTIGATE. IT IS TRUE THAT SHE WAS HESITANT TO
13 GIVE NAMES OF OTHER PEOPLE. SHE DIDN'T WANT TO GET ANYONE
14 ELSE IN TROUBLE. JUST BECAUSE HER CAREER WAS IN JEOPARDY
15 DOESN'T MEAN SHE WANTED TO GET ANYONE ELSE'S CAREER IN
16 JEOPARDY. THAT IS NOT WHO SHE IS.

17 YOU MAY ALSO HEAR SHE WAS A POOR PERFORMER, SHE WAS A
18 SAFETY RISK, SHE HAD ATTENDANCE PROBLEMS. BUT YOUR JOB IS TO
19 LOOK AT ALL OF THE EVIDENCE CRITICALLY. LOOK AT HER
20 ATTENDANCE. SHE WILL ADMIT SHE WAS LATE AFTER HER DAD DIED IN
21 MARCH, BUT LOOK AT WHAT HER ATTENDANCE WAS FOR THE OTHER
22 MONTHS AND FOR APRIL AND MAY AND JUNE AND JULY AND AUGUST AND
23 SEPTEMBER.

24 LOOK AT HOW THINGS THAT SHE REPORTED WHEN IT CAME TO
25 SAFETY WERE TREATED COMPARED TO HOW THEY TREATED THINGS WHEN

1 THEY SAY SHE WAS A SAFETY RISK ABOUT.

2 SHELL MADE IT CLEAR TO HER THAT SHE HAD TO DO EVERYTHING
3 PERFECTLY THE FIRST TIME BUT THE GUYS DIDN'T, AND THAT IS THE
4 DOUBLE STANDARD.

5 LET'S TALK A LITTLE BIT ABOUT WHAT HAPPENED AFTER SHE WAS
6 FIRED. MS. NEWTON LIVES IN BENECIA VERY CLOSE TO THE
7 REFINERY. SHE LIKED THE JOB BECAUSE SHE WAS LEARNING THINGS,
8 IT WAS CHALLENGING. IT PROVIDED A BETTER PATH FOR HER. SHE
9 WOULD HAVE BEEN MAKING SIX FIGURES VERY QUICKLY.

10 IT WAS HARD TO FIND A JOB LIKE THAT AFTER SHE WAS FIRED.
11 IT'S HARD TO GET A FOOT IN THE DOOR IN THE FIRST PLACE.
12 YOU'RE GOING TO HEAR THAT. IT'S VERY HARD TO FIND A REFINERY
13 JOB AFTER YOU'VE BEEN FIRED FROM ONE. SHE'S A WORKER THOUGH.
14 SHE HAS PICKED HERSELF BACK UP.

15 SHE NOW WORKS FOR ALASKA AIRLINES AT SFO. SHE'S STARTING
16 FROM THE BOTTOM AGAIN. SHE STARTED AT SUB-SAN FRANCISCO
17 MINIMUM WAGE. THE COMMUTE IS LONG, BUT SHE DOES HOPE TO
18 ADVANCE IN THAT COMPANY.

19 YOU WILL HEAR FROM AN EXPERT ECONOMIST WHO WILL TELL YOU
20 WHAT HER ANALYSIS IS OF MS. NEWTON'S LOST WAGES TO DATE, THAT
21 IS FROM THE DATE OF THE TERMINATION UNTIL TODAY, THE FIRST
22 DATE OF TRIAL MINUS WHAT SHE'S EARNED AT OTHER JOBS. AND THAT
23 TOTAL IS \$213,419.

24 AND YOU'RE ALSO GOING TO HEAR FROM THE EXPERT ECONOMIST
25 THAT IT'S UNLIKELY THAT MS. NEWTON IS EVER GOING TO CATCH UP

1 TO WHAT SHE WOULD HAVE BEEN MAKING AT SHELL WITH WHAT HER
2 TRAJECTORY IS NOW FOR HER JOB. AND SO OVER HER LIFETIME, HER
3 CAREER WORKING LIFE, YOU WILL HEAR THAT THE IMPACT THIS HAS
4 HAD ON HER FINANCIALLY IS VERY SIGNIFICANT. SO TAKING OUT
5 UNTIL 2042, THIS IS THE FIGURE FOR HER FUTURE EARNINGS
6 DIFFERENTIAL FOR HER LIFE.

7 BUT THAT IS -- IT'S DAMAGE TO THE WALLET. THERE IS DAMAGE
8 TO THE PERSON. YOU WILL HEAR FROM MS. NEWTON ABOUT WHAT IT
9 WAS LIKE TO WORK AT SHELL AND ESPECIALLY WHAT IT WAS LIKE TO
10 BE FIRED FROM THERE. SHE FELT SHAME, ANXIETY, STRESS. SHE
11 WAS EMBARRASSED. SHE AVOIDED SOCIAL SITUATIONS SO SHE DIDN'T
12 HAVE TO TELL PEOPLE, I DON'T WORK AT SHELL ANYMORE. I LOST MY
13 JOB. SHE HAD STOMACH PROBLEMS, ACNE, FATIGUE. IT WAS
14 DEVASTATING FOR HER SELF-CONFIDENCE AND HER SELF-WORTH.

15 AT THE TIME SHE WAS SUPPORTING HER MOM AFTER HER DAD'S
16 DEATH, AND SHE WAS IN LINE TO BUY THE FAMILY HOME THAT HER MOM
17 AND SISTER LIVED IN. SHE HAD PREQUALIFIED FOR A LOAN. WHEN
18 SHE LOST HER JOB, SHE LOST THE MORTGAGE AND THEY LOST THE
19 OPPORTUNITY TO BUY THE FAMILY HOME. YOU WILL HEAR FROM HER
20 LITTLE SISTER, BRIANNA NEWTON, ABOUT THE CHANGES SHE SAW IN
21 HER SISTER AFTER THIS. SHE'LL DESCRIBE HER SISTER'S
22 CONFIDENCE BEFORE AND AFTER AND THE IMPACT SHE SAW AND THE
23 OBSERVATIONS SHE MADE WITH HER SISTER.

24 YOU WILL HEAR AT THE END THAT SHELL IS AS RESPONSIBLE TO
25 COMPENSATE MS. NEWTON FOR THOSE LOSSES AS WELL AS HER ECONOMIC

1 LOSS.

2 LET'S TALK A LITTLE BIT ABOUT THE CLAIMS. YOU WILL HEAR
3 MUCH MORE ABOUT THIS AS THE JUDGE INSTRUCTED YOU AT THE END.
4 THERE ARE FIVE CLAIMS IN THIS CASE. THERE IS GENDER
5 DISCRIMINATION, GENDER HARASSMENT, FAILURE TO PREVENT
6 DISCRIMINATION AND HARASSMENT, RETALIATION FOR REPORTING
7 DISCRIMINATION AND HARASSMENT, AND THEN ANOTHER TYPE OF
8 RETALIATION -- IT IS UNDER THE LABOR CODE -- AND IT IS
9 RETALIATION FOR DISCLOSING THAT ACID SPILL AND THEN GETTING
10 WRITTEN UP BY MR. CURRAN AND EVERYTHING THAT HAPPENED AFTER
11 THAT.

12 I HAVE TO LAUGH AT THE NEXT SLIDE. I DIDN'T REALIZE WHAT
13 WAS GOING TO BE IN YOUR INSTRUCTIONS BUT IT TRULY IS A
14 SITUATION WHERE WITNESSES ARE GOING TO COME OUT OF ORDER. YOU
15 ARE NOT GOING TO HEAR EVERYTHING CHRONOLOGICALLY. EVERYONE
16 HAS THEIR PIECE. EVERY DOCUMENT HAS ITS PLACE IN THE CASE.
17 YOU WILL HAVE TO PUT IT TOGETHER OUT OF ORDER AND YOU WILL GET
18 THE WHOLE PICTURE AT THE END.

19 SO HOW CAN THIS BE FIXED?

20 (DISPLAYED ON SCREEN.)

21 YOU CAN FIND THAT SHELL VIOLATED THE LAW AND HOLD IT
22 ACCOUNTABLE AND REQUIRE SHELL TO FULLY COMPENSATE MS. NEWTON
23 FOR THE HARM IT CAUSED HER.

24 AT THE END OF THE CASE, WE WILL ASK YOU TO RETURN A
25 VERDICT IN HER FAVOR. AND I JUST WANT TO THANK YOU. I KNOW

1 MANY OF YOU ARE COMING FROM FAR AWAY, MIGHT NOT GET MUCH
2 SLEEP. BUT THANK YOU FOR BEING HERE, FOR YOUR ATTENTION, FOR
3 YOUR PATIENCE AND ESPECIALLY YOUR SERVICE TO THIS IMPORTANT
4 CASE.

5 **THE COURT:** THANK YOU, MS. NUGENT.

6 MR. LAFAYETTE.

7 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

8 (PAUSE IN THE PROCEEDINGS.)

9 **OPENING STATEMENT**

10 (DISPLAYED ON SCREEN.)

11 **MR. LAFAYETTE:** GOOD MORNING. I'VE LISTENED, AND NOW
12 I'M GOING TO TELL YOU A DIFFERENT SET OF FACTS ABOUT WHAT
13 HAPPENED IN THIS CASE. FIRST, I'M GOING TO TELL YOU A LITTLE
14 BIT ABOUT THIS REFINERY. THIS REFINERY OPENED APPROXIMATELY A
15 HUNDRED YEARS AGO -- A LITTLE OVER THAN A HUNDRED YEARS AGO.
16 IT HAS BEEN THERE EVER SINCE THEN. THIS REFINERY IS A LARGE
17 REFINERY. THIS IS NOT A REFINERY THAT IS A SMALL FACILITY.
18 IT'S OVER A THOUSAND ACRES LARGE. PEOPLE GET AROUND THIS
19 REFINERY BY DRIVING CARS, BY DRIVING TRUCKS. SO WHEN
20 INDIVIDUALS COME TO THIS REFINERY, THEY ARE NOT WORKING IN ONE
21 BUILDING IN ONE LOCATION DOING ONE THING. THEY ARE WORKING IN
22 DIFFERENT FACILITIES DOING DIFFERENT THINGS. WHEN YOU LOOK AT
23 THIS, YOU CAN START SEEING THE SCALE OF THE OPERATION HERE.

24 IN ADDITION TO THAT, WHEN PEOPLE DON'T WORK SOUNDLY, WHEN
25 PEOPLE DON'T WORK CAREFULLY, WHEN PEOPLE DON'T PAY ATTENTION

1 TO WHAT THEY ARE DOING, THIS IS A WORKPLACE THAT CAN BE
2 UNFORGIVING BECAUSE PEOPLE CAN DIE IN THIS WORKPLACE WHEN
3 PEOPLE DON'T DO THAT. AND MAYBE NOT THE FIRST TIME SOMEBODY
4 DOES IT, SOMEONE DIES; MAYBE NOT THE SECOND TIME SOMEONE DOES
5 IT, SOMEONE DIES. BUT WHAT YOU ARE ULTIMATELY LOOKING FOR IS
6 SUSTAINED BEHAVIOR OF SAFETY AND ADHERENCE TO SAFETY
7 PROTOCOLS.

8 NOW, SHELL DOESN'T JUST ACCEPT EVERYBODY WHO WALKS OFF THE
9 STREET. HISTORICALLY, IT HAS LOOKED TO PEOPLE WHO HAD CERTAIN
10 TYPES OF SKILL SETS TO WORK HAD IN THESE POSITIONS. OFTEN
11 THEY WERE PEOPLE WITH MILITARY BACKGROUND, PEOPLE WHO HAD
12 PREVIOUS HEAVY INDUSTRY EXPERIENCE, PEOPLE WHO HAD WHAT IS
13 REFERRED TO AS A PTEC DEGREE. PEOPLE WHO CAME IN WITH A
14 SOPHISTICATED KNOWLEDGE, NOT AN AWARENESS KNOWLEDGE BUT A
15 SOPHISTICATED KNOWLEDGE OF WORKING HANDS ON WITH THE TYPES OF
16 MACHINE TO THE EQUIPMENT THAT THEY HAVE OUT THERE THAT ARE
17 PROCESSING APPROXIMATELY 165 BARRELS OF CRUDE EVERY DAY.

18 THAT IS NOT THE BACKGROUND THAT MS. NEWTON CAME WITH. BUT
19 THAT'S ALL RIGHT. THAT'S ALL RIGHT. SHE CAME IN AND LET'S
20 TALK ABOUT WHAT HAPPENED.

21 WHAT HAPPENED HERE REALLY STARTS ON THIS DAY, JULY 19.
22 BECAUSE ON THE DAY BEFORE THAT CAMERON CURRAN WROTE AN EMAIL
23 TO HIS BOSS, ERIC PEREZ, AND HE SAID, THERE'S SOME PERFORMANCE
24 ISSUES AND WE NEED TO DEAL WITH THEM. BASICALLY, LAID OUT TWO
25 THINGS IN THE EMAIL, AND THESE WERE PERFORMANCE ISSUES THAT

OPENING STATEMENT - LAFAYETTE

1 WERE NOT INSIGNIFICANT PERFORMANCE ISSUES.

2 NOW, AT THIS POINT IN TIME, MS. NEWTON HAD BEEN WORKING AT
3 THIS REFINERY FOR OVER SEVEN MONTHS. SHE HAD GONE THROUGH THE
4 COMPREHENSIVE PROGRAM THAT SHELL PUTS ON FOR PEOPLE. FIRST
5 TWO MONTHS, IN-CLASS TRAINING; ORIENTATION. AND IN THAT THEY
6 ARE SPECIFICALLY TOLD ABOUT CERTAIN THINGS. IF YOU HAVE A
7 PROBLEM WITH ANYONE IN THIS REFINERY, YOU HAVE MULTIPLE
8 AVENUES OF COMPLAINING. YOU CAN GO TO YOUR BOSS, YOUR BOSS'
9 BOSS, OR ANYBODY IN THE LINE. GO TO HUMAN RESOURCES OR
10 ANYBODY IN HUMAN RESOURCES. YOU CAN GO -- THE OMBUDSMAN, IF
11 YOU WANT TO COMPLAIN. IF YOU ARE UNCOMFORTABLE WITH ANY OF
12 THAT, WE HAVE ANONYMOUS HELP LINE CALL IN CAN SAY, LOOK, I
13 HAVE A PROBLEM AND I WANT SOMEBODY TO DEAL WITH IT. AS OF
14 THIS DAY, JULY 19, 2016, THERE IS NO EVIDENCE AND THERE WILL
15 BE NO EVIDENCE THAT MS. NEWTON EVER COMPLAINED TO ANYONE THAT
16 SHE THOUGHT THAT SHE WAS BEING TREATED DIFFERENTLY IN THIS
17 WORKPLACE BECAUSE SHE WAS A WOMAN OR THAT ANYBODY HAD DONE
18 ANYTHING TO HER THAT SHE FOUND OFFENSIVE BECAUSE SHE WAS A
19 WOMAN. THAT NEVER HAPPENED. NEVER HAPPENED. AND THERE WILL
20 BE NO EVIDENCE IN THIS TRIAL THAT SAYS THAT IT HAPPENED.
21 INSTEAD, LET'S SEE WHAT DOES HAPPEN ON THIS DATE.

22 ON THIS DAY, MR. PEREZ WRITES THIS EMAIL.

23 (DISPLAYED ON SCREEN.)

24 I'M NOT SURE IF YOU CAN SEE IT .THAT'S ALL RIGHT. I'LL
25 HELP YOU. IT READS AS FOLLOWS.

OPENING STATEMENT - LAFAYETTE

1 NOW -- HE'S NOW THOUGHT ABOUT WHAT MR. CURRAN HAS TOLD HIM
2 AND HE'S NOW LOOKED AT HER PD LOG. NOW, THE PD LOG IS A LOG
3 WHERE YOU ACTUALLY WRITE THINGS ON IT POSITIVE THINGS IF THERE
4 IS SOMETHING POSITIVE TO SAY ABOUT SOMEONE, NEGATIVE IF THERE
5 IS SOMETHING NEGATIVE TO SAY AND COACHINGS. IF YOU WENT UP TO
6 SOMEONE AND YOU SAID, LOOK, I NEED TO COACH YOU. I WANT YOU
7 TO UNDERSTAND BETTER. I WANT YOU TO IMPROVE. YOU PUT IT ON
8 THE PD LOG. IF YOU THINK THERE'S A COUNSELING ISSUE THAT YOU
9 NEED TO TALK ABOUT, YOU NEED TO COUNSEL SOMEONE, YOU PUT IT ON
10 THE PD LOG. AND THEN, IF YOU THINK THEY'VE DONE SOMETHING
11 THAT JUSTIFIES SOME TYPE OF PUNITIVE ACTION BE TAKEN AGAINST
12 THEM, YOU CAN PUT THOSE AND YOU WON'T SEE THOSE ON HER LOG.
13 YOU'RE NOT GOING TO SEE AN ORAL REMINDER, WRITTEN REMINDER,
14 ANYTHING LIKE THAT. YOU SEE COACHINGS, AND YOU WILL SEE
15 COUNSELINGS ON HER PD LOG. WHAT DID HE WRITE? HE WRITES, I
16 THINK WE HAVE A FEW THINGS GOING ON HERE. HER BEHAVIORS
17 AROUND BEING LATE.

18 BEING LATE AT A REFINERY IS IMPORTANT. PEOPLE WHO WORK
19 THERE WORK 12-HOUR SHIFTS. WHEN THEY WERE READY TO GO HOME,
20 THEY ARE READY TO GO HOME. THE REFINERY WORKS 24/7. IT
21 NEVER, EVER STOPS. SO THERE HAS TO BE SOMEONE ONBOARD.
22 SOMEONE THERE EVERY MINUTE OF THE DAY, EACH ONE OF THOSE
23 POSITIONS DOING WHAT IS SUPPOSED TO BE DONE FOR THIS TO WORK.
24 IF YOU DON'T SHOW UP, SOMEBODY HAS TO STAY. IF YOU'RE LATE,
25 THAT PERSON HAS TO STAY BECAUSE NO ONE CAN LEAVE THOSE

1 POSITIONS UNATTENDED. HE'S CONCERNED ABOUT THAT.

2 THEN HE SAYS, FULFILLING HER COMMITMENT OF MAKING UP THE
3 DAYS, WE LET HER SHIFT SWAP. OKAY. WHAT'S THIS DATE? THIS
4 IS JULY. I JUST HEARD THE SWIFT SWAP WAS OVER THE MEMORIAL
5 DAY. THAT'S ALMOST A MONTH AND A HALF AGO. NOT SOMETHING
6 MADE UP IN THE SAME PAY PERIOD THAT IT WAS TAKEN IN. THAT'S A
7 PROBLEM.

8 LET'S LOOK FURTHER INTO THIS. HER BEING HERE THIS AMOUNT
9 OF TIME, AS A COMPANY WE EXPECT CONTINUOUS IMPROVEMENT ON HER
10 UNIT KNOWLEDGE. HER SAYING SHE USES DRAEGERS AND HER STATING
11 SHE OPENED A VALVE THAT WAS CONNECTED TO NOTHING HAS RAISED
12 SOME BIG RED FLAGS.

13 WHAT DOES THAT MEAN? THAT MEANS SOMEONE WENT OVER TO A
14 BIG THING THAT HAS A LOT OF STUFF IN IT AND OPENED IT UP AND
15 SOMETHING CAME POURING OUT OF IT. AND THEY DIDN'T KNOW WHAT
16 THEY WERE DOING. THEY DIDN'T KNOW WHAT THEY WERE DOING.

17 YOU DO THAT TYPE OF STUFF IN A REFINERY, YOU CAN GET
18 INJURED, OTHER PEOPLE COULD GET INJURED. MORE THINGS CAN
19 HAPPEN. AND THE MORE YOU DO STUFF LIKE THIS, THE MORE PEOPLE
20 WHO WORK THERE BECOME CONCERNED THAT YOU ARE NOT PROTECTING
21 THEM. THAT'S AN ISSUE IN THIS CASE.

22 WHAT DOES HE GO ON TO SAY? HE TALKS ABOUT HOW THEY
23 RECENTLY DEALT WITH SOMEONE ELSE. AND THEN HE SAID, I NEED
24 YOU TO SIT DOWN WITH HER. AND I NEED YOU -- THIS IS GOING TO
25 BE A FORMAL, SO YOU GET A UNION PERSON TO COME IN WITH HER, SO

OPENING STATEMENT - LAFAYETTE

1 THAT THE UNION PERSON CAN HELP HER UNDERSTAND AND APPRECIATE
2 WHAT IS GOING ON HERE.

3 THEN HE SAID, AS ALWAYS WE ARE JUST TRYING AT THIS POINT
4 TO GET THE FACTS AS SHE SEES IT AND ALSO SEND ME HOW YOU SEE
5 IT. HER PD FILE IS COPIED BELOW, AND IT LOOKS LIKE IT'S
6 STARTING TO PAINT A PICTURE AROUND PERFORMANCE AND BEHAVIOR
7 ISSUES. SEND ME YOUR FINDINGS.

8 BUT IS HE TRYING TO PUSH HER OUT THE DOOR? NO. AND HE'S
9 GOING TO TELL YOU THAT. BECAUSE LOOK AT THE PS, THE
10 POSTSCRIPT. I TALKED BOB MULLER -- NOT THE ONE THAT YOU
11 PROBABLY THINK ABOUT -- ABOUT CIARA'S PERFORMANCE AS IF WE
12 HAVE ANY RESOURCES TO CLOSE PERFORMANCE GAP. HE IS TRYING TO
13 FIGURE OUT IF THERE'S A WAY TO HELP HER IMPROVE HER KNOWLEDGE.
14 THAT'S WHAT ERIC PEREZ IS DOING IN THIS DOCUMENT. WHAT WAS IN
15 THE PD LOG? WHAT WAS IT? TAKE A LOOK.

16 HERE.

17 (DISPLAYED ON SCREEN.)

18 MARCH 23, CIARA WAS ONE HOUR LATE AND WAS GIVEN A TARDY.
19 NOT FIVE MINUTES, NOT TEN MINUTES. AN HOUR LATE. NOW UNDER
20 -- YOU WILL SEE SOMETHING. WE WILL TALK ABOUT THE DISCIPLINE
21 POLICY, THE ATTENDANCE POLICY. YOU GET THREE TARDIES, THAT IS
22 A PROBLEM. YOU WILL HEAR IT. THAT IS A PROBLEM. THAT IS THE
23 FIRST THING HE IS TALKING ABOUT. I'M NOT GOING TO SHOW YOU
24 EVERYTHING IN THE PD LOG. YOU'LL SEE IT IN THE TRIAL.

25 SECOND THING. HERE, APRIL 7, CIARA WAS 45 MINUTES LATE

OPENING STATEMENT - LAFAYETTE

1 AND WAS GIVEN A TARDY. NOW JEFF FISCHER AND ERIC PEREZ SAT
2 DOWN WITH CIARA AND EXPLAINED THE ATTENDANCE POLICY AND MADE
3 SURE THAT WAS NOT AN ISSUE. THAT'S APRIL. NOW SHE IS 45
4 MINUTES LATE.

5 SO THEN WHAT HAPPENS? HE NOTES TWO OTHER ISSUES HERE.
6 MAY 9, 2018. A PERSON IAN CHAMBERLAIN WRITES IN HER PD LOG,
7 CIARA AS THE PD-2 (SIC) UNIT OPERATOR LEFT HER RADIO ON THE
8 DESK, WAS IN THE UNIT WITHOUT HER RADIO AND MISSING GOGGLES.
9 WHY IS THAT IMPORTANT? THIS IS A BIG FACILITY. YOU HAVE THAT
10 RADIO WITH YOU BECAUSE, IF YOU ENCOUNTER A PROBLEM, YOU NEED
11 TO BE ABLE TO SAY, HELP. I NEED HELP. IF THERE'S A PROBLEM
12 IN THE REFINERY, YOU NEED TO HEAR IT SO SOMEONE CAN CALL YOU
13 AND SAY YOU NEED TO GET OUT OF THERE IF THERE IS PROBLEM. SHE
14 DIDN'T HAVE HER RADIO WITH HER. GOGGLES, WHY GOGGLES? THIS
15 IS A PLACE I -- I'VE SAID IS DANGEROUS. YOU HAVE TO HAVE
16 THOSE GOGGLES WITH YOU AT ALL TIMES. YOU DON'T KNOW WHAT MAY
17 HAPPEN. AND THAT IS A PROTECTIVE MECHANISM. THAT IS WHAT
18 KEEPS YOU ALIVE. SHE IS OUT THERE, DOESN'T HAVE IT.

19 SHE IS CRITICIZING THIS MAN BECAUSE HE WROTE HER UP, NOT
20 IN DISCIPLINE, IN A COACHING. I COACHED HER, TOLD HER SHE
21 NEEDS TO HAVE HER GOGGLES AND RADIO. THAT IS WHAT HE'S
22 SEEING. NOW HE'S SEEING, IN ADDITION TO ATTENDANCE, THERE IS
23 SAFETY ISSUES THAT SHE IS NOT ADHERING TO THAT WE EXPECT IN A
24 REFINERY LIKE THIS.

25 WHAT IS THE NEXT ONE? CIARA DID NOT CALL INTO THE BOARD

OPENING STATEMENT - LAFAYETTE

1 OPERATOR ABOUT BUMPING THE PUMP. NOW, YOU WILL HEAR THERE'S
2 PUMPS. SOMETIMES PUMPS ARE IN CONSTANT USE, SOMETIMES THEY'RE
3 NOT. BUT WHEN YOU NEED IT, YOU NEED IT. SO THEY BUMP THE
4 PUMP. BUMPING, IT'S LIKE TESTING IT, MAKE SURE IT IS WORKING.
5 AND THEY DO THIS ON A DAILY BASIS TO MAKE SURE THESE THINGS
6 ARE OPERATIONAL.

7 WHAT THEY'RE SAYING HERE IS SHE IS USING A HAND-HELD
8 MACHINE. SHE'S NOTING THAT THIS PUMP HAS BEEN CHECKED, BUT
9 SHE HASN'T DONE IT. SHE HASN'T DONE IT. SHE IS NOW AT THIS
10 POINT FALSIFYING THE FINDINGS, AND PEOPLE RELY UPON THESE
11 FINDINGS FOR PURPOSES OF DOING THINGS.

12 SO WHAT'S HAPPENING? SHE'S GETTING COACHED ON THAT. THIS
13 IS WHAT ERIC PEREZ IS SEEING.

14 THEN, THE 17TH. WHAT HAPPENS ON THE 17TH? HERE
15 (INDICATING).

16 CIARA CAME INTO THE STL SHIFT TEAM LEADER'S OFFICE,
17 INFORMED ME SHE HAD OPENED THE WRONG VALVE. I ASKED HER WHICH
18 ONE AND SHE TOLD ME IT WAS POTASSIUM TANK IN THE BAFFLE
19 (PHONETIC). I ASKED HER IF SHE WAS OKAY. FIRST THING IS, ARE
20 YOU OKAY? AND SHE SAID, YES. I ASKED HER HOW BIG. SHE SAID
21 SOMETHING.

22 THEN HE GOES ON AND SHE TELLS HIM IT WAS SMALL. YOU WILL
23 SEE THIS. HE GOES OUT AND HE LOOKS AT IT. HE REALIZED IT'S
24 NOT SMALL AT ALL. IT'S QUITE BIG.

25 AND HE GOES BACK TO HER. HE SAYS, IT'S BIGGER. SHE SAID,

OPENING STATEMENT - LAFAYETTE

1 WELL, OKAY. THIS OTHER GUY TOLD ME, DONNIE, THAT AFTER I DID
2 IT, HE CAME BEHIND ME AND I HADN'T CLOSED IT ALL THE WAY. SO
3 IT WAS STILL OUT THERE LEAKING AND HE CLOSED IT. HE CLOSED
4 IT, NOT HER. THAT'S BAD.

5 AND NO ONE IS GOING TO DENY THAT THESE THINGS HAPPENED.
6 EACH AND EVERY ONE OF THESE THINGS THAT I'M TALKING ABOUT
7 HAPPENED.

8 COACHING. NOW, TAKE A LOOK AT THIS. JULY 17, 2016.

9 CIARA WAS SCHEDULED TO WORK ON FRIDAY, THE 7TH, JULY 8TH
10 AND JULY 14. TWO DAYS SHE'S SCHEDULED TO WORK, TWO DAYS.
11 WHY? BECAUSE SHE'S MAKING UP THE TIME FOR THE WEDDING THAT
12 SHE WENT TO BACK ON MEMORIAL DAY.

13 AND SO NOW WHEN HER BOSS SAYS TO HER, WELL, HOW WAS IT?
14 SHE SAID SHE WORKED ONE DAY BUT NOT THE OTHER. AND HE'S LIKE,
15 WHY DIDN'T YOU WORK THE OTHER? SHE SAYS, WELL, I DIDN'T KNOW
16 I WAS SUPPOSED TO WORK THAT DAY.

17 WHERE IS THE EMAIL? WHERE IS THE TEXT MESSAGE? HE'S A
18 BIT PUT OFF. HE'S LIKE, WE DON'T SEND EMAILS AND TEXT
19 MESSAGES TO EACH OTHER. WE SIT DOWN AND TALK TO EACH OTHER.
20 WE HAVE MEETINGS EVERY DAY, EVERY SHIFT THAT WE WORK. I DON'T
21 UNDERSTAND THIS. HE'S NOT -- THIS IS SOMETHING HE DOESN'T
22 UNDERSTAND. THIS IS SOMETHING OUT OF HIS NORMAL.

23 SO HE WRITES THIS UP AS A COACHING. YOU SEE IT. HE
24 WRITES IT UP AND HE TALKS ABOUT IT. HE DESCRIBES THE ENTIRE
25 PROCESS. AND, YES, AT THE END OF IT, DOES HE SAY, IF YOU

OPENING STATEMENT - LAFAYETTE

1 DON'T KNOW HOW TO USE SCHEDULE PRO, LET ME SHOW YOU. BUT YOU
2 WERE SUPPOSED TO WORK THAT DAY.

3 NOW, SHE'S SUPPOSED TO MAKE UP AT LEAST ONE MORE 12-HOUR
4 SHIFT. DID SHE EVER DO IT? NO. YOU'RE GOING TO FIND OUT SHE
5 CAME IN ON ANOTHER DAY BUT SHE DIDN'T WORK THE FULL 12 HOURS.
6 SHE GOT PAID FOR HAVING WORKED TWO 12-HOUR SHIFTS BACK ON
7 MEMORIAL DAY WEEKEND AND, AS OF THIS DAY, TODAY, SHE HAS NEVER
8 EVER MADE IT UP. THAT'S THE TESTIMONY IN THIS CASE.

9 SO ONCE HE DOES THIS, ONCE MR. CURRAN SEES THIS, WHAT DOES
10 MR. CURRAN DO? MR. CURRAN GOES TO HER SHIFT TEAM LEADER AND
11 MR. PEREZ GOES TO HER SHIFT TEAM LEADER AND HE SAYS, LOOK.
12 SIT DOWN WITH HER. HE DOES. HE SITS DOWN WITH HER. YOU SEE
13 CAMERON CURRAN AND GUY ROZAR, WHO'S ANOTHER SHIFT TEAM LEADER,
14 CIARA NEWTON AND NICK BACKENS. COMES IN WITH NICK BACKENS,
15 WHO'S A UNION GUY. THEY SIT DOWN AND TALK ABOUT HER. THEY
16 TALK ABOUT THIS WITH HER.

17 NOW, INSTEAD OF HER SAYING, YOU KNOW WHAT? YOU'RE RIGHT.
18 THESE ATTENDANCE ISSUES ARE BAD. I'VE GOT THESE TWO TARDIES.
19 I'VE GOT THIS OTHER THING, THAT'S BAD. I NEED TO FIX IT.
20 UH-HUH. THAT'S NOT WHAT HAPPENS AT ALL.

21 YOU SEE WHAT HAPPENS NOW, SHE COMES INTO THE MEETING AND
22 SHE SAYS, WELL, I MAY HAVE BEEN TARDY WHEN I WAS WITH JEFF
23 FISCHER BACK IN APRIL AND MARCH BUT OTHER PEOPLE WERE TARDY
24 AND THEY DIDN'T GET WRITTEN UP. HE SAID, OKAY. I DON'T KNOW
25 ANYTHING ABOUT THAT. I WILL LOOK INTO THAT. THEN SHE SAYS --

OPENING STATEMENT - LAFAYETTE

1 HE SAYS, BUT, YOU KNOW, TODAY, THE 22ND, YOU'RE SUPPOSED TO BE
2 HERE. YOU WERE LATE. YOU WERE LATE TODAY. AND SHE SAYS,
3 WELL, I TALKED TO THE PERSON I WAS SUPPOSED TO RELIEVE,
4 PATRICK NEUMAN. I TEXTED AND I TOLD PATRICK NEUMAN THAT I
5 WOULD BE LATE. AND THEY SAY, YOU ARE SUPPOSED TO CONTACT THE
6 SHIFT TEAM LEADER, NOT ANOTHER PROBATIONARY EMPLOYEE AND TELL
7 THEM YOU ARE GOING TO BE LATE. YOU WERE LATE TODAY. SO THEY
8 TELL HER THAT.

9 AND THEN THEY GO ON AND THEY TALK ABOUT THESE OTHER ITEMS
10 WITH HER. TALK ABOUT EACH AND EVERY ONE OF THESE THINGS THAT
11 THEY TALKED ABOUT. THEY ASKED HER ABOUT THIS TANK. WE'LL
12 CALL IT THE BAKER TANK AND THE VALVE. THEY'LL TALK ABOUT
13 SOMETHING CALLED DRAEGER TUBES. YOU'LL SEE THEM. DRAEGER
14 TUBE IS A GLASS TUBE THAT COMES IN A BOX. AND THE BOX WITH
15 THE DRAEGER TUBE YOU ARE SUPPOSED TO TAKE IT OUT OF THE BOX,
16 TAKE IT OUT OF THE SLEEVE, BREAK EACH END OF IT OFF, STICK IT
17 INTO A PIECE OF EQUIPMENT AND MEASURE GAS DAILY. WHY?
18 BECAUSE SHELL NEEDS TO MEASURE STUFF TO MAKE SURE THAT THINGS
19 ARE WORKING PROPERLY. IT'S IMPORTANT.

20 IN THIS CASE YOU'RE GOING TO HEAR VARIOUSLY, VARIOUSLY PD
21 TESTIMONY. SHE PICKED ONE OFF THE FLOOR THAT HAD BEEN
22 PREVIOUSLY USED. SHE PICKED ONE UP THAT HAD ONE END OF IT
23 ALREADY BROKEN OFF. AND SHE USED THAT AS OPPOSED TO A FRESH
24 NEW DRAEGER TUBE.

25 AND WHEN SHE WAS ASKED WHY, SHE SAID SHE DIDN'T KNOWN --

OPENING STATEMENT - LAFAYETTE

1 IF SHE DIDN'T GET A RESULT, SHE DIDN'T KNOW SHE HAD A BAD
2 TUBE. YOU HAVE A BAD TUBE WHEN YOU DON'T HAVE A NEW TUBE
3 BECAUSE YOU CAN'T TELL IF IT'S BEEN COMPROMISED AND YOU CAN'T
4 RELY UPON THE RESULTS THAT YOU GET. BUT THAT'S WHAT SHE HAD
5 DONE. AND THEY TALKED TO HER ABOUT THAT, BECAUSE THAT'S A BAD
6 THING TO DO IN A REFINERY.

7 SO, AFTER HE GETS HIS INFORMATION, WHAT HAPPENS NEXT? HE
8 GOES AND TALKS TO MR. CURRAN, GOES AND TALKS TO HIS BOSS, ERIC
9 PEREZ. ERIC, THIS IS WHAT SHE'S SAYING. DOES ERIC DROP IT?
10 NO. ERIC PEREZ DOESN'T DROP THAT. ERIC PEREZ GOES AND HE
11 SAYS, LOOK, LET ME FIGURE OUT ABOUT THE TARDY ISSUE IN MARCH
12 AND APRIL. LET ME SEE IF I CAN FIND SOMETHING.

13 SO HE GETS SOMETHING CALLED THE GATE LOG REPORT. THE GATE
14 LOG REPORT IS A REPORT THAT SHOWS WHEN YOU SWIPED IN TO THE
15 REFINERY. YOU ARE NOT GOING TO GO IN THERE WITHOUT SWIPING IN
16 BECAUSE YOU NEED TO KNOW WHO IS IN THERE AND WHO HAS LEFT.
17 THIS GATE THAT YOU SWIPE IS NOT AT THE DOOR OF THE FACILITY
18 THAT SHE WORKS IN. IT'S OUTSIDE ACROSS THE STREET, THROUGH A
19 TUNNEL AT A PARKING GARAGE. AND THAT'S WHERE SHE SWIPED IN.

20 SO HE LOOKED AT ALL OF THE GATE LOG REPORTS FOR ALL OF THE
21 PEOPLE, THE FOUR OF THEM WHO WERE IN HER TRAINING CLASS WITH
22 JEFF FISCHER. ALL OF THEM. TO SEE IF THERE WAS ANY VALIDITY
23 WHATSOEVER TO HER CLAIM THAT CERTAIN PEOPLE WERE NOT BEING
24 DOCKED FOR THEIR TIME BECAUSE THEY HAD STOPPED TO GET DONUTS.

25 AND WHAT DID HE FIND? CIARA WAS ACTUALLY TARDY SIX TIMES

OPENING STATEMENT - LAFAYETTE

1 LOOKING AT THE GATE REPORT, MEANING SHE WASN'T THERE AT 6:00,
2 SHE WASN'T THERE AT 6:15. SHE WAS SOMEPLACE ELSE.

3 THEN YOU LOOK TO SEE ABOUT HER CONTEMPORARIES. ONE PERSON
4 WAS TARDY AND THE OTHER TWO HAD ZERO TARDIES IN THEIR RECORD,
5 MEANING HE LOOKED AT THE GATE LOG REPORTS AND THEY HAD PASSED
6 THROUGH THAT GATE LONG BEFORE THE TIME FOR THEM TO BE IN THEIR
7 SEATS. THERE WAS NO TRUTH TO THAT STATEMENT WHATSOEVER.

8 THEN DID HE LOOK TO SEE IF THERE HAD BEEN ANYTHING THAT IS
9 REFLECTED THAT SHE HAD BEEN TREATED DIFFERENTLY THAN ANYBODY
10 ELSE? DID HE TRY TO FIND OUT IF THERE WERE OTHER PEOPLE WHO
11 HAD COMMITTED ERRORS AND HADN'T BEEN LOOKED AT? YES. DID HE
12 FIND ANYTHING? NO. DID HE LEAVE IT AT THAT? NO.

13 HE WORKED IT OUT THROUGH HUMAN RESOURCES, AND THEY SAID
14 LET'S SIT BACK DOWN WITH HER AGAIN AND LET'S TALK TO HER AGAIN
15 ABOUT WHAT WE FOUND. AND THAT'S WHEN THEY HAD THE MEETING ON
16 AUGUST 2.

17 SO, BETWEEN SEPTEMBER 25, WHEN HE FINDS OUT, AND AUGUST 1,
18 HE'S BEEN RESEARCHING TO SEE WHAT HE COULD FIND, AND THEN ON
19 AUGUST 2, HE SETS A MEETING. HE LETS MS. NEWTON KNOW THERE IS
20 GOING TO BE A MEETING. AND WHEN THEY HAVE THAT MEETING, THEY
21 SIT DOWN. BUT BEFORE THAT, HE SENDS AN EMAIL OUT TO HR. HE
22 SAYS, LOOK, SHE SAYS SHE HAS SOME NOTES THAT SHE'S GOING TO
23 BRING AND THESE NOTES ARE GOING TO SHOW HOW SHE WAS TREATED
24 DIFFERENTLY. FINE.

25 SO THEY SIT DOWN WITH HER AND HE'S PREPARED WRITTEN

OPENING STATEMENT - LAFAYETTE

1 TALKING POINTS, WHICH YOU WILL SEE, WHERE HE LAYS OUT THE
2 SUBJECTS HE IS GOING TO COVER AND HOW HE IS GOING TO COULD GO
3 ABOUT DOING THIS. AND HE'S GOING TO TELL YOU WHAT HE WAS
4 GOING TO TELL -- AND THEN YOU ARE GOING TO SEE NOTES THAT WERE
5 TAKEN CONTEMPORANEOUSLY DURING THAT MEETING ON AUGUST 2 BY
6 MS. CHRISTINE LAYNE BECAUSE SHE WAS THERE, TOO.

7 AND WHAT YOU ARE GOING TO SEE IS THIS. FIRST OF ALL,
8 MS. NEWTON DID NOT BRING IN ANY NOTES. YES, YOU'LL SEE THAT
9 SHE PREPARED SOME NOTES ON AUGUST 1, AND WE ARE GOING TO TALK
10 ABOUT THOSE WHEN THEY COME IN, BUT YOU ARE NOT GOING TO SEE IN
11 THOSE NOTES WHERE SHE SHOWS THE THINGS THAT THEY'RE ASKING
12 ABOUT, EVIDENCE OF PEOPLE WHO WERE TREATED DIFFERENTLY THAN
13 YOU.

14 THEY COVER EACH ONE OF THESE ITEMS THAT'S LISTED ON THAT
15 PD LOG. THEY COVER THE TARDIES AND ATTENDANCE, AND THEY ASK
16 HER, IS THERE SOMETHING YOU CAN TELL US? SOME PEOPLE YOU CAN
17 IDENTIFY? SOME DATES, SOME EVENTS, SOME SOMETHING THAT WE CAN
18 LOOK AT WHERE WE CAN INVESTIGATE THAT AND SAY, OKAY. WE
19 LOOKED AT THAT, TOO, JUST LIKE WE LOOKED AT THOSE TARDIES. SHE
20 SAYS, NO. SHE SAID, LET ME THINK ABOUT IT.

21 AND HER, AND HER TWO UNION PEOPLE WHO WERE THERE AT THE
22 TIME, RAY JONES AND NICK BACKENS, THEY SAY, LET'S LET HER LOOK
23 AT IT. WE'LL GET BACK TO YOU AFTER SOMETHING CALLED THE LONG
24 CHANGE.

25 YOU SEE, WHEN YOU WORK THESE 12-HOUR SHIFTS, YOU GET TO

OPENING STATEMENT - LAFAYETTE

1 TAKE A WEEK OFF EACH MONTH. THAT'S CALLED A LONG CHANGE. SO
2 THEY GET A LONG CHANGE. SO SHE'S GOING TO DO THIS AFTER THE
3 LONG CHANGE.

4 WELL, THE LONG CHANGE COMES AND GOES, NOTHING TO REPORT.
5 DIDN'T GET ANYTHING. THEY TELL HER, IN ORDER FOR US DO THIS
6 AT THIS POINT, WE NEED YOU TO HELP US. WE NEED YOU TO
7 IDENTIFY SOME PEOPLE. WE NEED YOU TO IDENTIFY SOME EVENTS AND
8 DATES. OTHERWISE, YOU KNOW, IT IS LIKE A NEEDLE IN A
9 HAYSTACK. HELP US. DRIVE US. GUIDE US. WE'LL LOOK AT THIS.
10 WE'LL DO THIS.

11 SO WHAT HAPPENS NEXT? AUGUST 29. PLAINTIFF'S COUNSEL
12 STARTED OUT BY TALKING ABOUT AUGUST 29. NOW I'M AT AUGUST 29.
13 SO WHEN WE GET TO AUGUST 29, WHAT HAPPENS NOW?

14 FIRST THING IS ERIC PEREZ BACK -- HE LEAVES HIS OFFICE,
15 WHICH IS ON ANOTHER PART OF THE CAMPUS, AND HE DRIVES OVER TO
16 WHERE SHE IS, AND HE'S THERE FOR HER MORNING MEETING. WHY IS
17 HE THERE? HE IS GOING TO ASK HER THE QUESTIONS. DO YOU HAVE
18 SOMETHING THAT IS PASSED ALONG? IT IS NOW TIME. YOU'VE GOT
19 SOMETHING, GIVE IT TO ME. HELP ME.

20 I DON'T HAVE IT YET.

21 OKAY.

22 SEND ME AN EMAIL. SHE SAYS THAT.

23 HE SAYS, YOU CAN USE MY OFFICE. I'LL TAKE YOU TO MY
24 OFFICE. YOU CAN USE MY COMPUTER. YOU CAN BE COMFORTABLE.
25 YOU CAN BE SAFE. YOU CAN BE SECURE. YOU CAN WRITE ME

OPENING STATEMENT - LAFAYETTE

1 SOMETHING SO THAT I'LL HAVE SOMETHING TO GO BY.

2 SHE DECLINES.

3 THEN SHE COMES IN AND SHE SAYS, I FOUND THIS (INDICATING).
4 THIS IS THE STICKER. THIS IS WHAT SHE SAYS. OKAY -- AND I'M
5 NOT GOING TO -- NO ONE WILL TELL YOU THAT THIS IS APPROPRIATE
6 FOR A WORKPLACE. THEY ARE NOT GOING TO. IT'S NOT.

7 BUT THEY DON'T KNOW WHO DID THIS. THEY WENT AND TOLD
8 EVERYONE TO MAKE SURE THERE WAS NO MATERIAL LIKE THIS IN THE
9 WORKPLACE, AND THEY DID. AND FROM THAT POINT ON, THERE WAS
10 NOTHING LIKE THIS IN THE WORKPLACE AGAIN. WHILE SHE WAS
11 THERE, NOTHING LIKE THIS CAME UP AGAIN. THEY TOOK THE ACTION
12 THAT THEY THOUGHT WAS APPROPRIATE ACTION.

13 THERE'S A COMMENT ABOUT DON'T PUT IT IN THE PD LOGS.
14 MR. PEREZ WILL TELL YOU WHAT THAT MEANT. HE MEANT DON'T GO IN
15 THERE AND TELL EVERYBODY IN THE ROOM THIS IS BAD AND THEN PUT
16 SOMETHING IN EVERYBODY'S PD LOG THAT YOU TOLD THEM THAT,
17 BECAUSE IT SEEMS TO SUGGEST THAT YOU HAVE DONE SOMETHING BAD
18 TO SOMEONE THAT DIDN'T DO ANYTHING BAD. THAT WAS ALL THAT WAS
19 ABOUT. NOTHING MORE.

20 BUT MR. PEREZ IS STILL WAITING FOR MS. NEWTON TO GIVE HIM
21 SOMETHING. THAT SOMETHING NEVER COMES. BUT WHAT'S HAPPENING
22 NOW AND WHAT EVERYBODY KNOWS, NINE MONTHS PROBATION IS NINE
23 MONTHS, NINE MONTHS FOR YOU TO ESTABLISH THAT YOU ARE SAFE,
24 THAT YOU CAN DO THIS JOB, THAT THERE ARE NO ISSUES, THAT
25 PEOPLE AROUND YOU ARE SAFE. NINE MONTHS, AND THAT'S

OPENING STATEMENT - LAFAYETTE

1 SEPTEMBER. SO NOW WHAT HAPPENS, NINE MONTHS.

2 THE 17TH AND 20TH WITHOUT GETTING INFORMATION FROM HER,
3 MR. PEREZ AND MS. LAYNE STARTED REDOING EVERYTHING. THEY LOOK
4 AT ALL OF THE EMAILS RELATED TO HER. THEY GO AND INTERVIEW
5 MR. CURRAN. THEY GO AND INTERVIEW MR. FISCHER. BECAUSE THAT
6 IS ALL THEY HAVE GOT TO RELY UPON. AND THEY TRY TO FIND OUT
7 IF THERE'S ANY VALIDITY TO ANY OF THE THINGS THAT SHE SAYS
8 VAGUELY HAPPENED TO HER.

9 BUT AT THE SAME TIME, MR. CURRAN -- MR. PEREZ HAS TO DO
10 SOMETHING. HE HAS TO MAKE A DECISION AND THE REFINERY HAS TO
11 MAKE A DECISION AT THE NINE-MONTH LEVEL IF SHE AND THE OTHER
12 22 PEOPLE WHO CAME IN WITH HER ARE ABOUT TO PASS PROBATION.

13 AND SO HE SENDS OUT AN ASSESSMENT LETTER AND HE SAYS,
14 LOOK. I NEED EACH ONE OF YOU WHO, IN HER INSTANCE IS HER STL,
15 TO ANSWER SOME QUESTIONS RATING ONE TO FIVE. ONE BEING
16 UNACCEPTABLE, FIVE OBVIOUSLY REALLY GOOD.

17 CAMERON CURRAN WRITES BACK, PERMITTING, 2.
18 ATTITUDE/BEHAVIOR/ENERGIZED, 1. ISOLATING -- AND THEY WILL
19 TALK ABOUT WHAT THAT IS -- 2. WORK ETHIC, 1. EVERYTHING YOU
20 KNOW TODAY, HOW LIKELY WOULD YOU BE, 1 -- TO KEEP HER.

21 THAT'S WHAT CAMERON CURRAN WROTE. AND THIS IS IN ADDITION
22 TO THE ASSESSMENTS THAT PEOPLE WILL TELL YOU ABOUT THE
23 ASSESSMENT AND WHAT THE PURPOSE IS. THIS NOW IS WHETHER OR
24 NOT SOMEBODY GETS TO STAY. AND HE WROTE THE FOLLOWING:

25 NO, I DON'T THINK CIARA IS A GOOD MATCH OF OPERATIONS. I

OPENING STATEMENT - LAFAYETTE

1 AM VERY AFRAID THAT SHE WILL HURT HERSELF OR SOMEONE ELSE OR
2 POSSIBLY CAUSE A PROCESS INCIDENT. I HAVE LOST SLEEP AT NIGHT
3 FROM CONCERNS AS HER STL FEARING THAT SOMETHING BAD WILL
4 HAPPEN.

5 NOW AT THIS POINT IN TIME HER STL IS MR. METCALF. WHAT
6 DID HE DO? MR. METCALF DID THIS. DIDN'T KNOW ANYTHING ABOUT
7 HER OTHER THAN WHAT HE HAS SEEN. HE WRITES: PERMITTING, 2.
8 ATTITUDE/BEHAVIOR/ENERGIZED, 4. ISOLATING, 2. BUT LOOK AT
9 THAT LAST QUESTION. EVERYTHING YOU KNOW TODAY, HOW LIKELY
10 WOULD YOU BE TO HIRE THEM, 2.

11 SO NOW SHELL TAKES INTO CONSIDERATION, THESE ASSESSMENTS,
12 THE PD LOGS. AND YOU ARE GOING TO HEAR THAT AFTER THAT
13 AUGUST 2, MEETING, THERE WERE AT LEAST TWO MORE INCIDENTS OF
14 UNSAFETY THAT TOOK PLACE. YOU WILL HEAR IT. YOU WILL HEAR
15 WITNESSES COME AND TESTIFY ABOUT IT.

16 SO, WHAT HAPPENS NEXT? MS. LAYNE HERE IS RESPONSIBLE FOR
17 PREPARING THE EMAIL AND PREPARING A RECOMMENDATION TO
18 MANAGEMENT AS TO WHAT SHOULD HAPPEN. AND YOU WILL SEE HER
19 CORRESPONDENCE AND WHAT SHE PREPARES IS AN EMAIL THAT LAYS OUT
20 THE REASONS AS TO WHY THEY HAVE COME TO THE CONCLUSION THAT
21 SHE SHOULDN'T REMAIN, AND THAT IS A RECOMMENDATION THAT SHE
22 SENDS TO HER BOSS IN HUMAN RESOURCES. AND HER BOSS TAKES IT
23 OVER TO TWO OTHER PEOPLE AT THE REFINERY WHO ARE MORE SENIOR
24 THAN MR. PEREZ. AND THOSE TWO PEOPLE WEIGH IN AND THEY ALL
25 COME TO THE CONCLUSION THAT THE RECOMMENDATION SHOULD BE TO

OPENING STATEMENT - LAFAYETTE

1 TERMINATE HER.

2 NOW, HOW DETAILED WAS THIS COMMUNICATION? VERY. SHE,
3 MS. LAYNE, ALSO SENT ALONG THE WORK SHE HAD DONE, WITH
4 MR. PEREZ'S ASSISTANCE, TO DETERMINE IF THERE WAS ANY VALIDITY
5 TO ANY OF THESE CLAIMS. DID THAT WITHOUT THE ASSISTANCE OF
6 MS. NEWTON. AND WHAT DOES SHE WRITE?

7 CIARA IS VIEWED AS BEING SCARED TO BE IN THE UNIT. SHE IS
8 ALWAYS WORRIED ABOUT WHAT SHE IS SMELLING OR WHERE SHE IS
9 WALKING. WHEN THERE WAS A UNIT UPSET, ALL NEW HIRES WENT TO
10 SEE HOW IT WAS RESPONDED TO EXCEPT CIARA. SHE REMAINED IN THE
11 CONFERENCE ROOM. SHE DOESN'T SHOW THE SAME DRIVE AND TRYING
12 TO WALK THE LINE AND DO ADDITIONAL TRAINING TO IMPROVE AS SOME
13 OF THE OTHER OPERATORS ARE. THERE ARE LOT OF SAFETY CONCERNS
14 THAT SHE COULD GET SOMEONE HURT, SINCE SHE DOESN'T SEEM TO PAY
15 ATTENTION TO WHAT SHE IS DOING, AND ISN'T WILLING TO ASK
16 QUESTIONS.

17 THAT'S WHY SHE GETS TERMINATED. AND YOU WILL SEE THAT AND
18 YOU WILL HEAR THE WITNESSES TALK ABOUT THAT.

19 SO, YOU NOTICED THAT I DIDN'T TALK ABOUT MR. FISCHER.
20 MR. FISHER WAS NOT A SUPERVISOR. MR. FISHER IS A TRAINER.
21 AND WHAT HAPPENED HERE IS THIS: AFTER -- AFTER SHE GETS
22 TERMINATED, SHE STARTS TALKING ABOUT THINGS THAT SHE NEVER
23 TALKED ABOUT WHILE SHE WAS THERE AND SOME OF THESE THINGS
24 RELATE TO MR. FISHER. THAT HE USED COARSE LANGUAGE, THAT HE
25 HAD MADE SOME COMMENTS. YOU WILL HEAR TESTIMONY ON THAT AS TO

OPENING STATEMENT - LAFAYETTE

1 WHETHER OR NOT ANY OF THOSE THINGS ACTUALLY HAPPENED OR IF
2 THEY HAPPENED IN THE WAY THAT SHE DESCRIBES OR IF THEY
3 HAPPENED BECAUSE SHE WAS A WOMAN AS OPPOSED TO IF THEY
4 HAPPENED BECAUSE HE TALKS THE WAY HE TALKS TO EVERYBODY.

5 YOU WILL HEAR THAT TESTIMONY IN THIS COURTROOM.

6 THEN YOU GET TO THIS ISSUE OF THE ACID SPILL. SO LET'S
7 TALK ABOUT THE ACID SPILL. THE ACID TANK SITS WAY UP HIGH.
8 OKAY? WAY UP HIGH. IT'S TALL. AND THE ACID TANK IS ONE
9 WHERE PERIODICALLY SOMEBODY HAS TO COME AND DELIVER ACID TO
10 THE REFINERY ACID. EVERYBODY IS TRAINED ABOUT SAFETY ON THE
11 ACID TANK. FINE. THERE ARE TWO WAYS TO MEASURE THE DEPTH OF
12 SOMETHING OF THIS ACID TANK. ONE IS A SIGHT GLASS AND ONE A
13 GAUGE. YOU USE BOTH OF THESE THINGS, NOT ONE. THERE IS
14 REDUNDANCIES IN HERE. ONE ISN'T WORKING, USE THE OTHER ONE.
15 THAT IS WHAT IS HAPPENING HERE.

16 YES, MS. NEWTON PUTS THAT THE SIGHT GLASS ISN'T WORKING
17 PROPERLY. GUESS WHAT? SHE'S NOT THE ONLY ONE. OTHER PEOPLE
18 ALSO NOTED THAT THE SIGHT GLASS ISN'T WORKING PROPERLY. BUT
19 THE ISSUE BECOMES ON THE DAY IN QUESTION, WAS SHE THERE? NO.
20 DID SHE SEE ANYTHING HAPPEN? NO. DOES SHE KNOW WHAT
21 HAPPENED? NO.

22 SO WHAT IS IT THAT MS. NEWTON DID? MS. NEWTON HEARD
23 CAMERON CURRAN TALKING TO THE TRUCK DRIVER A DAY, TWO DAYS
24 AFTER THE EVENT HAD HAPPENED, AND THE TRUCK DRIVER SAID, I'M
25 NOT SURE YOU KNOW THIS BUT THERE WAS A SPILL THAT TOOK PLACE.

OPENING STATEMENT - LAFAYETTE

1 AND CAMERON CURRAN SAID, OKAY, AND THAT'S IT.

2 NOW, WHAT HAD HAPPENED ON THE NIGHT OF THE SPILL? THEY
3 TOOK ACTION AND COURSE OF ACTION TO REMEDIATE THE SPILL.
4 THERE IS A CERTAIN -- THERE ARE CERTAIN TYPES OF SUBSTANCES
5 THAT THEY PUT DOWN IF THERE'S AN ACID SPILL, AND THEY DID IT.
6 THIS WAS NOT A BIG ACID SPILL. THIS IS LIKE -- THE WAY I CAN
7 ANALOGIZE IT, IF YOU GO TO THE GAS STATION AND YOU'RE PUMPING
8 GAS IN YOUR CAR AND IT OVERSPILLS AND YOU GET SOME GAS AND IT
9 RUNS DOWN THE SIDE OF YOUR CAR, YOU ARE NOT HAPPY. WELL, ACID
10 IS A LITTLE MORE DANGEROUS THAN GAS, BUT THAT IS WHAT IT IS.

11 SO YOU HAD TWO PEOPLE THERE, ONE AT THE TOP WATCHING ONE
12 GAUGE, ONE AT THE OTHER WATCHING ANOTHER GAUGE. THEY'RE
13 TRYING TO MAKE SURE IT DOESN'T OVERSPILL, BUT IT DOES. DOES
14 IT COME RUNNING OVER THE TOP? NO. IT COMES RUNNING DOWN A
15 PIPE AND DROPS INTO A TROUGH. AND AROUND THIS TANK ITSELF IS
16 A CONCRETE BARRIER AROUND IT. SO, IF ANYTHING HAPPENS TO THIS
17 ACID, IT'S IN THE TROUGH, NOT ALL OVER THE GROUND AND STUFF.
18 AND THIS PIPE ITSELF RUNS INTO A SEPARATE TROUGH WHERE ANY
19 ACID WHICH COLLECTED WOULD HAVE BEEN COLLECTED. AND THAT IS
20 WHERE THEY PUT WHAT THEY CALL OYSTER SHELL AND OTHER THINGS TO
21 MAKE SURE THAT IT WAS REMEDIATED.

22 AND BY THE TIME MS. NEWTON ARRIVED, THERE WAS NO RISK
23 THERE. IT HAD BEEN REMEDIATED PROPERLY. SO NOW SHE SAYS SHE
24 WANTS TO PUT IT ON HER PD LOG BUT SHE DIDN'T WITNESS IT. SHE
25 WANTS TO PUT IT ON HER SHIFT LOG BUT SHE DIDN'T WITNESS THIS.

OPENING STATEMENT - LAFAYETTE

1 WHAT YOU WILL HEAR -- AND I WILL LET HIM COME AND TESTIFY
2 AND HE WILL TELL YOU -- MR. CURRAN WILL TELL YOU EXACTLY WHAT
3 HAPPENED AND HE WILL TELL YOU THAT THERE WAS NO NOTHING DONE
4 TO RETALIATE AGAINST HER.

5 BUT TALKING ABOUT THE ACID SPILL THAT HAD TAKEN PLACE SOME
6 OTHER TIME AND ON SOME OTHER SHIFT, AND HE WILL TELL YOU THAT
7 THEY DOCUMENTED THAT ACID SPILL BY PREPARING A ZERO SIXTY
8 REPORT. NOT HIM THE SHIFT TEAM LEADER WHO WAS ON AT THE TIME
9 DOCUMENTED IT BY PREPARING A REPORT, A ZERO SIXTY REPORT.

10 SO AT THE END OF THE DAY, I'M GOING TO COME BACK TO YOU
11 AND TELL YOU WHAT ALL THIS MEANS. I'M NOT GOING TO TALK ABOUT
12 A PUZZLE. I'M GOING TO TALK ABOUT A STRAIGHT LINE, A STRAIGHT
13 LINE. BECAUSE AT THE END OF THE DAY THE CENTRAL ISSUE, AS I
14 UNDERSTAND IT, IS WHETHER OR NOT SHE WAS FIRED BECAUSE SHE IS
15 A WOMAN. NO ONE IS GOING TO COME IN HERE AND TESTIFY THAT ANY
16 OF THESE PEOPLE WHO MADE THIS DECISION HAVE DONE ANYTHING THAT
17 MAKES YOU SUGGEST, NO COMMENTS, NO DEPICTIONS, NO LITERATURE,
18 NOTHING THAT SAYS THAT THEY HAVE A BIAS AGAINST WOMEN.

19 PLAINTIFF WON'T EITHER. I'LL ASK HER. DID YOU SEE
20 ANYTHING THAT ERIC PEREZ DID THAT MADE YOU THINK HE HAD A BIAS
21 AGAINST WOMEN? AND SHE WILL SAY NO. I WILL ASK HER ABOUT
22 MICHAEL BECK, WHO YOU'VE NOT HEARD ABOUT. I WILL ASK HER THE
23 SAME QUESTION. NONE OF THEM. NONE OF THEM. THERE WON'T BE
24 ANYBODY WHO COMES IN THIS COURTROOM WHO SAYS OTHERWISE.

25 I WILL ASK THESE QUESTIONS ABOUT RETALIATION AS WELL, AND

1 NONE OF THEM ARE GOING TO SAY THAT THEY DID ANYTHING TO HER
2 BECAUSE SHE IS A WOMAN OR THEY DID ANYTHING TO HER BECAUSE SHE
3 RAISED THIS ISSUE ABOUT ACID.

4 I WILL ASK THEM, OKAY, SINCE YOU HAVE PURE OF HEART, DID
5 ANYONE COME TO YOU AND BIAS YOU? AND THEY ARE GOING TO ANSWER
6 THAT AND THEY ARE GOING TO SAY NO. WE RELY UPON THE
7 INFORMATION THAT'S PROVIDED TO US WITH REGARD TO ATTENDANCE
8 ABSENCE. I'M GOING TO SHOW YOU PD LOGS FROM HER COWORKERS,
9 AND THEY ARE NOT GOING TO LOOK LIKE HERS. I'M GOING TO SHOW
10 YOU -- ASK THEM ABOUT THEIR TARDIES, AND THEY ARE NOT GOING TO
11 LOOK LIKE HERS. SHE WAS NOT TREATED DIFFERENTLY IN THIS
12 WORKPLACE. SHE WAS HELD ACCOUNTABLE IN THIS WORKPLACE.
13 THAT'S WHAT HAPPENED.

14 AND AT THE END OF THE DAY, I'LL COME BACK AND TELL YOU
15 THAT THIS IS NOT A CASE OF DISCRIMINATION. I WILL TELL YOU
16 THAT SHELL IS NOT RESPONSIBLE FOR A MILLION-AND-SOME-ODD
17 DOLLARS TO PAY HER FOR THE REST OF HER LIFE. I'LL TELL YOU
18 THAT. I'M GOING TO TELL YOU THAT THIS IS NOT A CASE WHERE WE
19 DID ANYTHING WRONG.

20 NOW, THIS (INDICATING) HAPPENED. I'LL TALK TO YOU ABOUT
21 HOW YOU ARE SUPPOSED TO LOOK AT THIS (INDICATING) IN THIS
22 CASE.

23 THANK YOU.

24 **THE COURT:** OKAY. LADIES AND GENTLEMEN, WHY DON'T WE
25 GO AHEAD AND TAKE OUR FIRST BREAK AND THEN WE WILL START WITH

1 THE EVIDENTIARY PORTION.

2 I DO HAVE A -- THE INSTRUCTION I GAVE YOU ON FRIDAY THAT I
3 WILL REPEAT AGAIN TOWARDS THE END OF THE DAY, BUT THE ONE
4 PIECE THAT I WANT TO REMIND YOU ABOUT IS THAT YOU CANNOT
5 DISCUSS THESE MATTERS WITH EACH OTHER UNTIL YOU GO IN FOR
6 DELIBERATIONS. OKAY? SO THAT'S THE ONE PIECE I WANT TO
7 REMIND YOU AT THIS POINT. I WILL REMIND YOU ABOUT ALL THE
8 OTHERS LATER.

9 WE WILL STAND IN RECESS FOR 15 MINUTES FOR OUR FIRST
10 MORNING BREAK. DO WE HAVE SOMETHING FOR THEM?

11 **THE CLERK:** YES. THEY'VE HAD IT SINCE THIS MORNING.

12 **THE COURT:** OKAY. I ALWAYS START YOU OUT WITH A
13 PLATE OF BAGELS AND FRUIT TO GET YOU STARTED.

14 **JUROR:** THANK YOU.

15 **THE COURT:** ENJOY YOUR BREAK AND WE WILL SEE YOU BACK
16 HERE IN 15 MINUTES.

17 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

18 **THE COURT:** OKAY. WE WILL STAND IN RECESS FOR 15
19 MINUTES. IF YOU WANT TO HAVE MR. PEREZ IN THE COURTROOM,
20 THAT'S FINE WITH ME.

21 **MR. LAFAYETTE:** THAT'S FINE, YOUR HONOR.

22 **THE COURT:** ALL RIGHT. THANK YOU.

23 (RECESS TAKEN AT 10:08 A.M.; RESUMED AT 10:24 A.M.)

24 **THE CLERK:** REMAIN SEATED. COURT IS IN SESSION.
25 COURT IS IN ORDER.

1 **THE COURT:** ALL RIGHT. LET'S CALL THEM IN.

2 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

3 **THE COURT:** YOU MAY ALL BE SEATED. THE RECORD WILL
4 REFLECT THAT WE ARE BACK ON THE RECORD.

5 OKAY. WE WILL BEGIN THE EVIDENTIARY PORTION WITH A FEW
6 STIPULATIONS OF FACT. SO, THE PARTIES HAVE AGREED TO THESE
7 PARTICULAR FACTS SO YOU MUST TREAT THEM AS HAVING BEEN PROVED.
8 THEY ARE PRIMARILY DATES.

9 SO, ONE, PLAINTIFF CIARA NEWTON WAS EMPLOYED AT
10 DEFENDANT'S REFINERY IN MARTINEZ FROM JANUARY 4TH, 2016 TO
11 SEPTEMBER 29TH, 2016.

12 TWO. IN FEBRUARY 2016, NEWTON WAS ASSIGNED TO THE
13 OPERATIONS CENTRAL DEPARTMENT.

14 THREE. DEFENDANT TERMINATED NEWTON'S EMPLOYMENT ON
15 SEPTEMBER 29TH, 2016.

16 SO, THOSE ARE ESTABLISHED FACTS.

17 THE OTHER THING, I JUST WANTED TO MENTION TWO THINGS TO
18 YOU. ONE, THE PLAINTIFF IS CURRENTLY PREGNANT. SO I'VE GIVEN
19 HER PERMISSION TO LEAVE THE COURTROOM IF SHE HAPPENS TO NEED
20 TO USE THE FACILITIES AND THAT'S NOT ON OUR REGULAR SCHEDULE,
21 SO DON'T HOLD THAT AGAINST HER.

22 AND THEN, SECOND, IN THIS CASE WHERE YOU HAVE WITNESSES
23 WHO ARE BEING CALLED BY BOTH PARTIES, WHAT WILL HAPPEN IS A
24 WITNESS WILL BE CALLED BY THE PLAINTIFF AND DEFENSE MAY CHOOSE
25 NOT TO DO ANY EXAMINATION AFTERWARDS BECAUSE THEY ARE GOING TO

1 CALL THAT WITNESS BACK IN THEIR OWN CASE. OKAY? SO THAT'S
2 THE WAY IT WILL WORK.

3 WE WILL CALL OUR FIRST WITNESS.

4 **MS. SMALLETS:** YOUR HONOR, THE PLAINTIFF WOULD LIKE
5 TO CALL ERIC PEREZ.

6 **THE COURT:** ALL RIGHT.

7 (ERIC PEREZ, CALLED AS A WITNESS FOR THE PLAINTIFF, HAVING
8 BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

9 **THE WITNESS:** I DO.

10 **THE CLERK:** PLEASE BE SEATED.

11 **THE WITNESS:** THANK YOU.

12 **THE CLERK:** SCOOT UP TO THE MICROPHONE. PLEASE STATE
13 YOUR FULL NAME AND SPELL YOUR LAST NAME. LET ME CHECK TO MAKE
14 SURE YOUR MIC IS ON. GO AHEAD.

15 **THE WITNESS:** MY NAME IS ERIC PEREZ, P-E-R-E-Z.

16 **THE COURT:** YOU MAY PROCEED.

17 **MS. SMALLETS:** MAY I APPROACH MR. PEREZ TO PROVIDE
18 HIM WITH A WITNESS BINDER?

19 **THE COURT:** YOU MAY.

20 (BINDER HANDED TO WITNESS.)

21 **DIRECT EXAMINATION**

22 **BY MS. SMALLETS:**

23 **Q.** GOOD MORNING, MR. PEREZ?

24 **A.** GOOD MORNING.

25 **Q.** YOU WORK FOR SHELL OIL AT THE MARTINEZ REFINERY, CORRECT?

1 **A.** CORRECT.

2 **Q.** YOU'VE WORKED THERE SINCE JULY 1994, RIGHT?

3 **A.** YES.

4 **Q.** THAT IS MORE THAN 24 YEARS, RIGHT?

5 **A.** YES.

6 **Q.** AND YOU WERE AT THE REFINERY WHEN MS. NEWTON WORKED THERE,
7 WEREN'T YOU?

8 **A.** I WAS.

9 **Q.** DURING THE TIME THAT MS. NEWTON WORKED FOR SHELL YOU WERE
10 A PRODUCTION SUPERVISOR, CORRECT?

11 **A.** THAT'S CORRECT.

12 **Q.** AND YOU WORKED IN THE OPERATION CENTRAL DEPARTMENT?

13 **A.** THAT WAS PART OF THE DEPARTMENT. I HAD TWO DEPARTMENTS,
14 BUT OPCEN WAS ONE OF THEM.

15 **Q.** YOU DID WORK IN THE OPERATION CENTRAL DEPARTMENT, CORRECT?

16 **A.** YES.

17 **Q.** AND OPERATION CENTRAL IS ALSO KNOWN AS OPCEN?

18 **A.** YES.

19 **Q.** LET'S TALK A BIT MORE ABOUT THE ORGANIZATION OF THE OPCEN
20 DEPARTMENT. ONE OF YOUR SUPERVISORS DURING THIS TIME PERIOD
21 WAS MIKE BECK, RIGHT?

22 **A.** HE WAS DEPARTMENT MANAGER FOR OPCEN.

23 **Q.** HE WAS ONE OF YOUR SUPERVISORS?

24 **A.** YES. I REPORTED DIRECTLY TO MIKE BECK.

25 **Q.** AND THERE ARE FOUR TEAMS IN OPCEN?

1 **A.** THAT'S CORRECT.

2 **Q.** EACH TEAM WORKS A DIFFERENT SHIFT?

3 **A.** YES.

4 **Q.** AND EACH TEAM HAS A DIFFERENT SHIFT TEAM LEAD; IS THAT
5 RIGHT?

6 **A.** THAT'S CORRECT.

7 **Q.** AND THOSE FOUR SHIFT TEAM LEADS IN OPCEN REPORTED TO YOU
8 DURING THAT TIME PERIOD; IS THAT RIGHT?

9 **A.** THAT'S CORRECT.

10 **Q.** AND THE OPERATORS IN THE OPCEN DEPARTMENT REPORTED
11 DIRECTLY TO THOSE FOUR SHIFT TEAM LEADS; IS THAT RIGHT?

12 **A.** THAT'S CORRECT.

13 **Q.** WHILE MS. NEWTON WAS WORKING FOR OPCEN, CAMERON CURRAN WAS
14 A TEMPORARY SHIFT TEAM LEAD IN OPCEN; IS THAT RIGHT?

15 **A.** I AM NOT A HUNDRED PERCENT SURE WHEN CAMERON GOT PROMOTED.

16 **Q.** OKAY.

17 **A.** HE WAS A TEMPORARY AND THEN HE WENT TO PERMANENT SHIFT
18 TEAM LEADER.

19 **Q.** OKAY. AND MR. RICHARD METCALF WAS ALSO A TEMPORARY SHIFT
20 TEAM LEADER IN OPCEN DURING THAT TIME PERIOD?

21 **A.** YES, I BELIEVE THAT TO BE CORRECT.

22 **Q.** CAMERON CURRAN WANTED TO BE APPOINTED TO A PERMANENT SHIFT
23 TEAM LEAD DURING THE 2016 TIME PERIOD; ISN'T THAT RIGHT?

24 **MR. LAFAYETTE:** OBJECTION. RELEVANCE, YOUR HONOR.

25 **THE COURT:** I'LL GIVE HER A LITTLE BIT OF LEEWAY.

1 **BY MS. SMALLETS:**

2 **Q.** CAMERON CURRAN WANTED TO BE PROMOTED TO THE POSITION OF
3 PERMANENT SHIFT TEAM LEAD DURING THE 2016 TIME PERIOD?

4 **A.** I BELIEVE THAT TO BE CORRECT, YES.

5 **Q.** YOU DECIDED WITH INPUT FROM OTHERS TO PROMOTE CAMERON
6 CURRAN TO THAT POSITION IN 2016, CORRECT?

7 **A.** I'M NOT SURE WHAT YEAR CAMERON GOT PROMOTED.

8 **Q.** RICHARD METCALF ALSO WANTED TO BE PROMOTED TO THE POSITION
9 OF PERMANENT SHIFT TEAM LEAD; IS THAT RIGHT?

10 **A.** YES, THAT IS CORRECT.

11 **Q.** AND YOU PARTICIPATED IN THE DECISION NOT TO PROMOTE HIM
12 DURING THE TIME THAT YOU WERE PRODUCTION SUPERVISOR; IS THAT
13 CORRECT?

14 **A.** THAT IS CORRECT.

15 **Q.** AND RICHARD METCALF WAS EVENTUALLY PROMOTED TO PERMANENT
16 SHIFT TEAM LEAD BUT NOT UNTIL AFTER YOU LEFT THE PRODUCTION
17 SUPERVISOR POSITION?

18 **MR. LAFAYETTE:** OBJECTION, HEARSAY.

19 **THE COURT:** OVERRULED.

20 **A.** YEAH, THAT IS CORRECT.

21 **BY MS. SMALLETS:**

22 **Q.** IF YOU DON'T -- DO YOU RECALL, WAS CAMERON CURRAN PROMOTED
23 TO THE POSITION OF PERMANENT SHIFT TEAM LEAD DURING THE TIME
24 YOU WERE PRODUCTION SUPERVISOR?

25 **A.** YES, I BELIEVE THAT IS CORRECT. THERE WERE TWO OPENINGS

1 AND CAMERON WAS ONE OF THEM.

2 Q. AND YOU STOPPED BEING THE PRODUCTION SUPERVISOR IN ABOUT
3 NOVEMBER OF 2016; IS THAT RIGHT?

4 A. YEAH. RIGHT AROUND THAT TIME.

5 Q. OKAY. NOW, I WOULD LIKE TO TALK TO YOU ABOUT MS. NEWTON'S
6 WORK ENVIRONMENT.

7 MS. NEWTON TOLD YOU THAT SHE FOUND A STICKER ON HER DESK
8 THAT SAYS, IF YOUR BE PUSSY HURTS, JUST STAY HOME?

9 A. AUGUST 29TH, WHEN SHE TOLD ME ABOUT THAT.

10 Q. THE STICKER -- THAT STICKER IS OFFENSIVE, ISN'T IT?

11 A. YES.

12 Q. MS. NEWTON WAS UPSET WHEN SHE TOLD YOU ABOUT THE STICKER,
13 WASN'T SHE?

14 MR. LAFAYETTE: OBJECTION. REQUIRES SPECULATION ON
15 HIS PART.

16 THE COURT: LAY SOME FOUNDATION.

17 BY MS. SMALLETS:

18 Q. YOU SPOKE TO MS. NEW IN PERSON WHEN SHE PROVIDED YOU WITH
19 THE STICKER?

20 A. YES.

21 Q. AND YOU HAD AN OPPORTUNITY TO OBSERVE HER DEMEANOR WHEN
22 SHE PROVIDED IT TO YOU?

23 A. I DID.

24 Q. WAS SHE UPSET?

25 A. I DON'T RECALL. THAT WAS -- I DON'T RECALL.

1 Q. AND YOU -- IN THAT MEETING, YOU PROMISED MS. NEWTON YOU
2 WOULD FIND OUT WHERE THE STICKER CAME FROM; IS THAT RIGHT?

3 A. THAT IS INCORRECT.

4 Q. YOU PROMISED HER YOU WOULD INVESTIGATE?

5 A. I DON'T REMEMBER EVER SAYING PROMISE, BUT I WOULD LOOK
6 INTO IT.

7 Q. AND YOU DID TELL HER YOU WOULD INVESTIGATE; IS THAT RIGHT?

8 A. I TOLD HER I WOULD LOOK INTO IT. I APOLOGIZED THAT SHE
9 SAW THE STICKER AND I TOLD HER I WOULD LOOK INTO IT.

10 Q. AFTER YOUR CONVERSATION WITH MS. NEWTON, YOU TOLD
11 CHRISTINE LAYNE IN HUMAN RESOURCES ABOUT THE STICKER, DIDN'T
12 YOU?

13 A. I BELIEVE I SENT HER AND MIKE BECK AN EMAIL SAYING THAT A
14 STICKER WAS FOUND THAT WAS INAPPROPRIATE.

15 Q. MIKE BECK IS YOUR BOSS AT THE TIME?

16 A. HE WAS.

17 Q. CHRISTINE LAYNE IS IN HUMAN RESOURCES?

18 A. SHE IS.

19 Q. AND YOU SENT THEM A COPY OF THE STICKER AT THAT TIME?

20 A. I BELIEVE I DID, BUT I JUST DON'T RECALL.

21 Q. LATER THAT DAY, YOU EMAILED THE SHIFT TEAM LEADS ABOUT THE
22 STICKER; IS THAT RIGHT?

23 A. I BELIEVE I DID.

24 Q. PLEASE TURN TO EXHIBIT 46 IN THE WITNESS BINDER I'VE GIVEN
25 YOU. IS THAT AN EMAIL YOU SENT TO THE SHIFT TEAM LEADS?

1 **A.** YES, IT WAS.

2 **MS. SMALLETS:** YOUR HONOR, I WOULD LIKE TO OFFER
3 EXHIBIT 46 INTO EVIDENCE.

4 **THE COURT:** ANY OBJECTION?

5 **MR. LAFAYETTE:** NO, YOUR HONOR.

6 **THE COURT:** ADMITTED.

7 (PLAINTIFF'S EXHIBIT 46 RECEIVED IN EVIDENCE)

8 **BY MS. SMALLETS:**

9 **Q.** CAN YOU PLEASE TAKE A LOOK AT PAGE 2 OF THAT EMAIL?

10 **A.** OKAY.

11 (DISPLAYED ON SCREEN.)

12 **Q.** IS THAT A COPY OF THE STICKER THAT MS. NEWTON TOLD YOU WAS
13 LEFT ON HER DESK?

14 **A.** IT WAS.

15 **Q.** NOW, LET'S GO BACK AND LOOK AT WHAT YOU WROTE ON YOUR
16 EMAIL.

17 YOU WROTE THIS TO THE SHIFT TEAM LEADS?

18 **A.** I DID.

19 **Q.** YOU REFERRED TO THEM AS THE STL'S; IS THAT RIGHT?

20 **A.** THAT'S CORRECT.

21 **Q.** ARE THEY FREQUENTLY REFERRED TO THAT WAY AT THE REFINERY?

22 **A.** YES.

23 **Q.** TAKE A LOOK AT THE SECOND TO LAST SENTENCE. THERE IS A
24 REFERENCE TO THE PD FILE. WHAT DOES THAT MEAN?

25 **A.** POSITIVE DISCIPLINE FILE WHERE -- GOOD AND BAD GOES IN

1 THERE.

2 Q. IS THAT WHERE SHELL KEEPS TRACK OF THE OPERATOR'S
3 PERFORMANCE?

4 A. THAT'S ONE OF THE SPOTS.

5 Q. IS THAT HOW SHELL COMMUNICATES WITH THE OPERATORS ABOUT
6 THEIR PERFORMANCE? IS THAT ONE OF THE WAYS SHELL --

7 A. IT IS A WAY OF DOCUMENTING CONVERSATIONS.

8 Q. NOW, YOU SPECIFICALLY TOLD THE SHIFT TEAM LEADS NOT TO PUT
9 ANYTHING ABOUT THE STICKER IN THE PD FILE; ISN'T THAT TRUE?

10 A. NO, THAT'S NOT TRUE.

11 Q. MR. PEREZ, I WOULD LIKE YOU TO -- TO TAKE A LOOK AT THE
12 SECOND TO LAST SENTENCE OF YOUR EMAIL? ISN'T IT TRUE THAT YOU
13 TOLD SHIFT TEAM LEADS THERE IS NO NEED TO DOCUMENT ANYTHING
14 ABOUT THE STICKER IN ANYONE'S PD FILE?

15 A. THAT IS NOT THE WAY THAT I READ THAT.

16 Q. MR. PEREZ, ISN'T IT TRUE THAT YOU SAID TO THE STL'S IN
17 THIS EMAIL -- AND I'M QUOTING -- THERE IS NO NEED TO DOCUMENT
18 IN THE PD FILES --

19 MR. LAFAYETTE: OBJECTION. PREVIOUSLY ASKED AND
20 ANSWERED.

21 THE COURT: OVERRULED.

22 A. WHAT I MEANT ABOUT THAT IS TO HAVE THE CONVERSATIONS WITH
23 THE TEAMS AND PUT A STOP TO -- TO THAT STICKER. IT WILL NOT
24 BE TOLERATED IN THE REFINERY. THERE WAS NO REASON THAT THEY
25 TALKED TO THE TEAM.

1 **BY MS. SMALLETS:**

2 **Q.** MR. PEREZ, ON THE VERY DAY THAT YOU RECEIVED THAT STICKER
3 FROM MS. NEWTON, YOU SENT AN EMAIL TO THE SHIFT TEAM LEADS AND
4 YOU TOLD THEM THAT THERE'S NO NEED TO DOCUMENT THAT STICKER IN
5 THE PD FILES; IS THAT RIGHT?

6 **A.** THAT IS NOT THE WAY THAT I READ THAT. THERE IS NO NEED TO
7 DOCUMENT THE CONVERSATION THEY HAD WITH THE TEAM.

8 **Q.** WAS THE STICKER DOCUMENTED IN ANYONE'S PD FILE?

9 **A.** NOT THAT I RECALL.

10 **Q.** AND NO ONE WAS EVER DISCIPLINED FOR BRINGING THAT STICKER
11 INTO THE REFINERY, WERE THEY?

12 **A.** IT WAS -- IT WAS NEVER FOUND OUT WHO BROUGHT THAT STICKER
13 IN THE REFINERY.

14 **Q.** YOU NEVER TOLD THE SHIFT TEAM LEADS TO TRY TO FIGURE OUT
15 WHO BROUGHT THE STICKER INTO THE REFINERY, DID YOU?

16 **A.** I BELIEVE I TALKED TO METCALF THAT DAY. HE WAS A SHIFT
17 LEADER AT THE TIME. I ASKED HIM -- I THINK I RECALL I ASKED
18 HIM IF HE HAD ANY -- IF HE KNEW WHO BROUGHT IT IN, AND I DON'T
19 BELIEVE HE KNEW AT THE TIME. BUT MY WHOLE INTENT THERE WAS TO
20 PUT A STOP TO IT. IT WON'T BE TOLERATED IN THE REFINERY, TO
21 TALK TO YOUR TEAMS, TO MAKE SURE THEY ARE NOT BRINGING ANY OF
22 THIS STUFF INTO THE REFINERY.

23 **Q.** YOU DON'T RECALL TELLING ANYONE, ANY OF THE SHIFT TEAM
24 LEADERS TO FIND OUT WHO BROUGHT THE STICKER IN, DO YOU?

25 **A.** I BELIEVE I TALKED TO METCALF THAT DAY. HE WAS THE SHIFT

1 TEAM LEADER ON -- AT -- AT THAT TIME. I JUST DON'T RECALL MY
2 CONVERSATION WITH HIM.

3 Q. BUT YOU --

4 A. BUT YOU --

5 Q. I AM SORRY?

6 A. I DON'T RECALL IF I TOLD HIM TO LOOK, IF HE KNEW WHO
7 BROUGHT IT IN. YEAH, I DON'T KNOW.

8 Q. YOU DON'T RECALL TELLING HIM TO LOOK WHO BROUGHT IT IN, DO
9 YOU?

10 A. I DON'T RECALL, BUT I THINK I ASKED HIM IF HE KNEW WHO
11 BROUGHT IT IN.

12 Q. AS YOU SIT HERE TODAY, YOU DON'T KNOW WHO BROUGHT THAT
13 STICKER IN TO THE REFINERY, DO YOU?

14 A. I DON'T KNOW.

15 Q. SOMEONE DID TELL YOU THAT THERE IS A STACK OF STICKERS
16 THAT HAD BEEN BROUGHT INTO THE WORKPLACE; ISN'T THAT RIGHT?

17 A. I DON'T RECALL THAT CONVERSATION OR WHO HAD TOLD ME THAT.

18 Q. MR. PEREZ, I TOOK YOUR DEPOSITION ON MARCH 8TH OF THIS
19 YEAR; IS THAT RIGHT?

20 A. THAT'S CORRECT.

21 Q. YOU TOOK AN OATH TO TELL THE TRUTH?

22 A. I DID.

23 Q. AND YOUR LAWYER WAS WITH YOU?

24 A. YES.

25 Q. AND THAT DEPOSITION WAS CLOSER IN TIME TO THE EVENTS THAN

1 TODAY?

2 A. YES.

3 Q (By Ms. Smallets) YOUR HONOR, I WOULD LIKE TO READ
4 FROM THE WITNESS'S DEPOSITION PAGE 69, 22 TO 74.

5 MR. LAFAYETTE: I COULDN'T HEAR --

6 THE COURT: 70-74. OKAY. GO AHEAD.

7 MS. SMALLETS: QUESTION: DID YOU -- WERE YOU EVER
8 INFORMED THAT THERE WAS MORE THAN ONE COPY OF THE STICKER AT
9 THE REFINERY? ANSWER: THAT -- NOT THAT I CAN RECALL BUT HOLD
10 ON. LET ME THINK ABOUT THAT ONE. I WANT TO -- I BELIEVE I
11 WAS TOLD, AND I DON'T RECALL BY WHOM, THAT SOMEBODY HAD
12 BROUGHT A STACK OF THOSE -- OF THESE STICKERS IN.

13 BY MS. SMALLETS:

14 Q. DO YOU RECALL THAT?

15 A. IF IT'S ON THERE, BUT I JUST DON'T RECALL.

16 Q. YOU DIDN'T ASK THE PERSON WHO TOLD YOU THAT WHO HAD
17 BROUGHT THE STICKERS IN, DID YOU?

18 A. I DON'T EVER REMEMBER HAVING THAT CONVERSATION.

19 Q. IT WOULD BE IMPORTANT TO YOU TO KNOW IF A SHIFT TEAM
20 LEADER HAD BROUGHT THE STICKER INTO THE REFINERY, WOULDN'T IT?

21 A. YES.

22 Q. BECAUSE IT WOULD BE IMPORTANT TO KNOW IF A SUPERVISOR HAD
23 BROUGHT A STICKER INTO THE REFINERY?

24 A. YES.

25 Q. BUT YOU DON'T RECALL EVER ASKING CAMERON CURRAN IF HE

1 BROUGHT THE STICKER INTO THE REFINERY, DO YOU?

2 **A.** I CAN'T SAY I DID. I JUST DON'T RECALL.

3 **Q.** AND AS YOU SIT HERE TODAY, YOU DON'T RECALL ASKING
4 MR. CURRAN THAT, DO YOU?

5 **A.** I DON'T RECALL.

6 **Q.** AND AS YOU SIT HERE TODAY, YOU DON'T RECALL ASKING JEFF
7 FISCHER IF HE BROUGHT THAT STICKER INTO THE REFINERY, DO YOU?

8 **A.** NO, I DON'T RECALL. IT WAS JUST TOO LONG AGO.

9 **Q.** WHEN MS. NEWTON BROUGHT THAT STICKER -- WHEN MS. NEWTON
10 TOLD YOU ABOUT THAT STICKER, THAT WASN'T THE FIRST TIME SHE
11 HAD RAISED CONCERNS ABOUT HOW SHE WAS BEING TREATED AT WORK,
12 WAS IT?

13 **A.** THIS WAS ON THE 29TH?

14 **Q.** YES.

15 **A.** YEAH. I HEARD ABOUT GUY ROZAR AND CAMERON INTERVIEWED HER
16 AND SHE BROUGHT UP STUFF AT THAT TIME.

17 **Q.** AND YOU WERE AWARE THAT MS. NEWTON HAD CONCERNS ABOUT THE
18 WAY HER SUPERVISORS WERE TREATING HER?

19 **MR. LAFAYETTE:** OBJECTION. QUESTION'S OVERBROAD AND
20 VAGUE, YOUR HONOR.

21 **THE COURT:** SUSTAINED.

22 **BY MS. SMALLETS:**

23 **Q.** YOU TOLD MS. NEWTON'S SUPERVISOR, CAMERON CURRAN, ON
24 JULY 26, THAT MS. NEWTON FEELS LIKE SHE IS NOT BEING TREATED
25 BY EVERYONE -- LIKE EVERYONE ELSE; ISN'T THAT TRUE?

1 **A.** WHAT DAY WAS THAT?

2 **Q.** JULY 26TH.

3 **A.** YOU WOULD HAVE TO SHOW ME. I DON'T....

4 **Q.** TAKE A LOOK AT EXHIBIT 31 IN YOUR WITNESS BINDER.

5 **A.** OKAY.

6 **Q.** DOES THAT REFRESH YOUR RECOLLECTION --

7 **A.** IT DOES.

8 **Q.** -- THAT YOU TOLD MR. CURRAN ON JULY 26 THAT MS. NEWTON
9 FEELS SHE IS NOT BEING TREATED LIKE EVERYONE ELSE?

10 **A.** THAT IS FROM THE INTERVIEW NOTES I GOT FROM GUY ROZAR AND
11 CAMERON AT THE TIME.

12 **Q.** THAT -- DOES THAT REFRESH YOUR RECOLLECTION THAT YOU TOLD
13 THAT TO MR. CURRAN?

14 **MR. LAFAYETTE:** OBJECTION. ASKED AND ANSWERED.

15 **THE COURT:** OVERRULED.

16 **THE WITNESS:** CAN YOU REPEAT THAT, PLEASE?

17 **BY MS. SMALLETS:**

18 **Q.** MY QUESTION TO YOU IS: DOES THAT REFRESH YOUR
19 RECOLLECTION THAT YOU TOLD MR. CURRAN ON JULY 26, THAT
20 MS. NEWTON FEELS LIKE SHE'S NOT BEING TREATED LIKE EVERYONE
21 ELSE?

22 **A.** YES. BUT THAT IS JUST IN REFERENCE TO WHAT THEY HAD GAVE
23 ME WHEN THEY INTERVIEWED HER AT THE TIME.

24 **Q.** YOU TOLD MR. CURRAN THAT?

25 **A.** YEAH.

1 Q. YOU ALSO TOLD MR. CURRAN, MS. NEWTON FEELS THAT SHE IS
2 BEING SINGLED OUT?

3 A. THAT WAS IN REFERENCE OF THE INTERVIEW NOTES I GOT FROM
4 GUY ROZAR AND CAMERON.

5 Q. YOU TOLD MR. CURRAN THAT?

6 A. I GET -- LET ME JUST READ IT. (PAUSE.) YES.

7 Q. AND A FEW DAYS LATER, ON JULY 29TH, YOU EXCHANGED INSTANT
8 MESSAGES WITH CAMERON CURRAN, RIGHT?

9 A. CAN YOU SHOW ME IT?

10 Q. IT IS EXHIBIT 37.

11 A. OKAY.

12 Q. ARE THESE INSTANT MESSAGES THAT YOU EXCHANGED WITH
13 MR. CURRAN ON JULY 29TH?

14 A. YES.

15 Q. THESE ARE INSTANT MESSAGES THAT YOU EXCHANGED WITH MR.
16 CURRAN ON A SHELL INSTANT MESSAGING APP; IS THAT RIGHT?

17 A. IT'S LINCOLN, YEAH. OR SKYPE. I'M NOT SURE.

18 Q. YOU WERE WRITING THEM FROM YOUR WORK COMPUTER?

19 A. YEAH.

20 MS. SMALLETS: YOUR HONOR, I WOULD LIKE TO OFFER
21 EXHIBIT 37 INTO EVIDENCE.

22 MR. LAFAYETTE: NO OBJECTION, YOUR HONOR.

23 THE COURT: ADMITTED.

24 (PLAINTIFF'S EXHIBIT 37 RECEIVED IN EVIDENCE)

25 (DISPLAYED ON SCREEN.)

1 **BY MS. SMALLETS:**

2 **Q.** AT THE TIME THAT YOU EXCHANGED THESE MESSAGES WITH
3 MR. CURRAN, MR. CURRAN HAD JUST GIVEN MS. NEWTON HER MONTHLY
4 REVIEW, RIGHT?

5 **A.** YES.

6 **Q.** AND HE TOLD YOU MS. NEWTON WAS ASKING IF SHE WAS BEING
7 TREATED THE SAME AS ANOTHER OPERATOR?

8 **A.** YES, THAT'S CORRECT.

9 **Q.** AND THAT OPERATOR THAT SHE WAS ASKING ABOUT WAS A MAN,
10 CORRECT?

11 **A.** YES.

12 **Q.** AND MR. CURRAN TOLD YOU THAT MS. NEWTON IS PUSHING HARD ON
13 THE EQUALITY THING.

14 **A.** YES.

15 **Q.** YOU DIDN'T TELL MR. CURRAN THAT THAT WAS AN INAPPROPRIATE
16 THING TO SAY, DID YOU?

17 **A.** THIS WAS ABOUT THE TARDIES.

18 **Q.** MR. PEREZ, MY QUESTION TO YOU WAS: YOU DIDN'T TELL
19 MR. CURRAN THAT THAT WAS AN INAPPROPRIATE THING TO SAY, DID
20 YOU?

21 **A.** THIS HERE, THIS INTERCHANGE WITH ME AND CAMERON WERE
22 AROUND TARDIES AND BEING CONSISTENT HOW WE APPLY TARDIES.
23 THAT IS WHAT THIS MESSAGE IS ABOUT HERE. I JUST WANT TO MAKE
24 THAT CLEAR. THAT IS WHAT THIS MESSAGE IS ABOUT HERE.

25 **Q.** MR. PEREZ, MY QUESTION TO YOU WAS: WHEN MR. CURRAN SAID

1 THAT TO YOU, YOU DIDN'T TELL HIM THAT THAT WAS AN
2 INAPPROPRIATE THING FOR HIM TO HAVE SAID, DID YOU?

3 **A.** I DON'T RECALL THAT.

4 **Q.** OKAY. AND NOWHERE IN THIS MESSAGE IS THERE A REFERENCE TO
5 TARDIES, IS THERE?

6 **A.** THE REFERENCE -- I GUESS THE REFERENCE WAS IN MY MIND WHEN
7 I WAS SPEAKING, INSTANT MESSAGING BACK AND FORTH HERE, IT WAS
8 AROUND TARDIES BECAUSE I KNEW CIARA AT THE TIME SAID WE
9 WEREN'T CONSISTENT WITH HOW WE APPLIED TARDIES.

10 **Q.** MR. PEREZ, NOWHERE IN THIS MESSAGE IS THERE ANY REFERENCE
11 TO TARDIES, IS THERE?

12 **A.** NO.

13 **Q.** AND MS. NEWTON HAD NEVER SAID YOU WERE INCONSISTENT IN HOW
14 YOU APPLIED TARDIES WITH RESPECT TO MR. WESSELMAN, HAD SHE?

15 **A.** IT WAS WITH THE OTHER NEW HIRES THAT SHE WAS REFERENCING.

16 **Q.** JUST SO I'M CLEAR. THE REFERENCE HERE TO BILL, THAT IS TO
17 BILL WESSELMAN, CORRECT?

18 **A.** THAT IS CORRECT.

19 **Q.** AND THAT IS THE PERSON THAT -- THAT'S THE OTHER NEW HIRE
20 THAT'S REPORTING TO CAMERON CURRAN IN JULY OF 2016, CORRECT?

21 **A.** I BELIEVE -- YEAH. I BELIEVE BILL WAS ON THE SAME TEAM AS
22 CIARA.

23 **Q.** AND NONE OF THE OTHER NEW HIRES WHO TRAINED UNDER JEFF
24 FISCHER WERE ON CAMERON CURRAN'S TEAM, RIGHT?

25 **A.** NOT THAT I BELIEVE.

1 Q. OKAY. AND MS. NEWTON HAD ONLY RAISED A CONCERN ABOUT
2 TARDIES WITH RESPECT TO THE PEOPLE, THE THREE NEW HIRES THAT
3 SHE TRAINED WITH UNDER JEFF FISCHER, CORRECT?

4 A. I BELIEVE THAT TO BE CORRECT.

5 Q. AFTER THIS SKYPE EXCHANGE WITH MR. CURRAN, YOU TOLD
6 CHRISTINE LAYNE IN HR THAT MS. NEWTON WAS REPORTING THAT SHE
7 WAS BEING TREATED DIFFERENTLY; IS THAT RIGHT?

8 A. CAN YOU SHOW ME, PLEASE?

9 Q. PLEASE LOOK AT EXHIBIT 34, THE LAST PAGE.

10 MR. LAFAYETTE: I COULDN'T HEAR THE EXHIBIT NUMBER.

11 THE COURT: 34.

12 MR. LAFAYETTE: THANK YOU.

13 Q. YOU TOLD CHRISTINE LAYNE IN HR THAT MS. NEWTON WAS
14 REPORTING THAT SHE WAS BEING TREATED DIFFERENTLY.

15 A. YOU'RE TALKING ABOUT THE DOCUMENT, THE TALKING POINTS,
16 CORRECT? I WANT TO BE SURE WE ARE TALKING ABOUT THE SAME
17 THING.

18 Q. YES.

19 A. THE STATEMENTS FROM CIARA ARE DOCUMENTED AND I WANTED TO
20 GET MORE INFORMATION FROM HER ABOUT THAT AT THIS TIME. AND
21 CHRISTINE DID KNOW. SHE HAD READ THIS DOCUMENT.

22 Q. OKAY. SO YOU TOLD CHRISTINE LAYNE THAT CIARA SAID IT
23 ISN'T FAIR TO GET IN TROUBLE FOR REPORTING WHEN OTHER PEOPLE
24 HAVE INCIDENTS THAT DON'T GET REPORTED.

25 A. WHERE ARE YOU SEEING THAT -- THE LAST STATEMENT?

1 Q. THE FIRST BULLET POINT.

2 A. THIS IS WHAT CIARA HAD SAID DURING THE INVESTIGATION.
3 THAT I NEEDED TO FOLLOW UP ON. THAT'S CORRECT.

4 Q. AND YOU SENT THIS ON JULY 28TH, RIGHT?

5 A. YES, THAT'S CORRECT.

6 Q. SO YOU WERE AWARE THAT MS. NEWTON REPORTED THAT CONCERN
7 PRIOR TO JULY 28, CORRECT?

8 A. IT FIRST CAME TO ME WHEN GUY ROZAR AND CAMERON INTERVIEWED
9 HER AND THEN CIARA BROUGHT THIS UP. MY INTENT WAS TO GET MORE
10 INFORMATION, SO I COULD LOOK INTO THIS.

11 Q. SO YOU KNEW THIS, THAT SHE HAD THESE CONCERNS BY NO LATER
12 THAN JULY 28TH?

13 A. YES.

14 Q. YOU ALSO TOLD MS. LAYNE THAT MS. NEWTON WAS RAISING A
15 CONCERN THAT THE STL'S PICK AND CHOOSE WHICH INCIDENTS TO
16 REPORT.

17 A. THAT IS WHAT CIARA HAD SAID DURING THAT MEETING WITH GUY
18 AND CAMERON AND THE UNION REPRESENTATION.

19 Q. AND YOU WEREN'T PRESENT IN THAT MEETING?

20 A. NO.

21 Q. YOU TOLD MS. LAYNE THAT CIARA HAD -- AT SOME POINT PRIOR
22 TO JULY 28, MS. NEWTON HAD REPORTED THAT SHE'S NOT BEING
23 TREATED THE SAME AS THE OTHER GUYS.

24 A. I BELIEVE IT WAS JULY 25TH, IS WHEN I SAW GUY ROZAR AND
25 CAMERON'S NOTES AND I BECAME AWARE OF WHAT CIARA HAD SAID IN

1 THAT MEETING. THAT IS WITH CAMERON, GUY, TWO UNION
2 REPRESENTATION OR UNION STEWARDS. IT MIGHT HAVE BEEN ONE OR
3 TWO UNION STEWARDS; I'M NOT A HUNDRED PERCENT SURE. BUT I WAS
4 AWARE OF THAT ON JULY 25TH.

5 Q. MR. PEREZ, MY QUESTION TO YOU WAS THAT ON JULY 28TH, BY NO
6 LATER THAN JULY 28TH, YOU WERE AWARE THAT MS. NEWTON WAS
7 CLAIMING THAT SHE'S NOT BEING TREATED THE SAME AS THE OTHER
8 GUYS.

9 A. YEAH. THAT -- THAT IS CORRECT. THAT IS WHAT CIARA SAID
10 DURING THAT INTERVIEW.

11 Q. YOU TOLD THAT TO CHRISTINE LAYNE?

12 A. I DID.

13 Q. YOU TALKED TO MS. NEWTON BEFORE JULY 28TH, CORRECT?

14 A. JUST IN GENERAL OR....

15 Q. YOU HAD CONVERSATIONS WITH HER?

16 A. YES.

17 Q. BUT YOU DON'T RECALL ANYTHING THAT WAS SAID IN THOSE
18 CONVERSATIONS, DO YOU?

19 A. I MEAN, WHEN I WOULD SEE HER THE CONTROL CENTER, IT WAS
20 JUST A FRIENDLY CONVERSATION. JUST LIKE THE REST OF THE NEW
21 HIRES WERE.

22 Q. YOU DON'T RECALL THE SPECIFICS OF THE CONVERSATIONS YOU
23 HAD WITH MS. NEWTON, DO YOU?

24 MR. LAFAYETTE: OBJECTION. PREVIOUSLY ASKED AND
25 ANSWERED.

1 **THE COURT:** OVERRULED. SHE'S ON THE CLOCK. YOU CAN
2 ANSWER.

3 **THE WITNESS:** I MEAN, JUST LIKE -- I MEAN, THE
4 CORDIAL CONVERSATIONS, HI AND HOW IS IT GOING. BESIDES
5 THAT....

6 **BY MS. SMALLETS:**

7 **Q.** MS. NEWTON TALKED TO YOU ABOUT CONCERNS SHE HAD WITH JEFF
8 FISCHER, DIDN'T SHE?

9 **A.** NO.

10 **Q.** MS. NEWTON -- YOU AND MS. NEWTON HAD A CONVERSATION ABOUT
11 TARDIES DURING THE TIME SHE REPORTED TO JEFF FISCHER, DIDN'T
12 YOU?

13 **A.** WE DID.

14 **Q.** AND DURING THAT CONVERSATION SHE TALKED TO YOU ABOUT
15 CONCERNS SHE HAD?

16 **A.** NO, SHE DIDN'T.

17 **Q.** DO YOU RECALL ANYTHING THAT WAS SAID DURING THAT
18 CONVERSATION?

19 **A.** I WANTED -- I DON'T. I BELIEVE WE JUST WENT OVER OUR THE
20 SHELL'S TARDY POLICY AT THAT TIME.

21 **Q.** THERE WAS A MEETING ON AUGUST 2ND TO DISCUSS THE -- TO
22 DISCUSS THE ISSUES THAT YOU RAISED IN YOUR JULY 28TH, EMAIL.

23 **A.** YES.

24 **Q.** AND YOU WERE PRESENT AT THAT MEETING?

25 **A.** I WAS.

1 Q. MS. LAYNE WAS ALSO AT THAT MEETING?

2 A. SHE WAS.

3 Q. AND RAY JONES AND NICK BACKENS FROM THE UNION WERE THERE
4 AS WELL?

5 A. THAT IS CORRECT.

6 Q. AND DURING THAT MEETING MS. NEWTON SAID THAT SHE WAS BEING
7 TREATED DIFFERENT?

8 A. NO... I DON'T RECALL IF SHE SAID ANYTHING LIKE THAT IN
9 THAT MEETING.

10 MS. SMALLETS: YOUR HONOR, I WOULD LIKE TO READ FROM
11 THE WITNESS'S DEPOSITION PAGE 103, 19 TO 23.

12 THE COURT: GO AHEAD.

13 MS. SMALLETS: QUESTION: DID SHE SAY SHE HAD OTHER
14 CONCERNS? ANSWER: SHE DID BUT I DON'T RECALL WHAT THEY WERE.
15 I WOULD HAVE TO -- ONE MINUTE, PLEASE. THAT SHE WAS BEING
16 TREATED DIFFERENT AND THERE WERE TRAPS BEING SET UP.

17 BY MS. SMALLETS:

18 Q. SO MS. NEWTON AT THAT MEETING SAID SHE WAS BEING TREATED
19 DIFFERENTLY, DIDN'T SHE?

20 A. I DON'T -- I DON'T BELIEVE SHE DID. I BELIEVE THAT WAS
21 FROM THE INTERVIEW NOTES FROM CAMERON AND GUY ROZAR. THAT
22 AUGUST 2ND, MEETING WAS TO GO AND FIND OUT MORE ABOUT WHAT SHE
23 WAS SAYING COMING OUT OF THE GUY ROZAR, CAMERON MEETING.

24 MS. SMALLETS: YOUR HONOR, I WOULD LIKE TO READ FROM
25 THE WITNESS'S DEPOSITION AT PAGE 110 THROUGH 12. I AM SORRY.

1 STARTING AT 101:24 THROUGH 102:4. AND THEN 103, 10 THROUGH
2 103:23.

3 **THE COURT:** YOU DON'T HAVE THE ANSWER ON 102.

4 **MS. SMALLETS:** I'M GOING TO START AT 103 -- SORRY.
5 103:10.

6 **THE COURT:** ALL RIGHT. CAN YOU GIVE ME THOSE AGAIN?

7 **MS. SMALLETS:** SURE.

8 **THE COURT:** 101:24 --

9 **MS. SMALLETS:** WELL, ACTUALLY 110:12 THEN 103, 10
10 THROUGH 23.

11 **MR. LAFAYETTE:** I COULDN'T HEAR THE LAST ONE.

12 **MS. SMALLETS:** 103, 10 THROUGH 23. GUY ROZAR.

13 **THE COURT:** ALL RIGHT. GO AHEAD.

14 **BY MS. SMALLETS:** QUESTION: YOU PREPARED -- HAVING PREPARED A
15 DOCUMENT YOU WENT OVER WITH THEM ON 8/2? ANSWER: YES.

16 QUESTION: HOW LONG DID THE MEETING LAST ANSWER: I DON'T
17 RECALL. DID YOU GIVE CIARA THE DOCUMENT YOU REFERRED TO

18 DURING THE MEETING? I DON'T RECALL. DO YOU RECALL ANYTHING
19 THAT WE DISCUSSED DURING THE MEETING? THE DOCUMENT WAS

20 DISCUSSED AND THEN SHE WAS GOING TO LET ME KNOW OF WHAT OTHER
21 CONCERNS SHE HAD. QUESTION: DID SHE SAY SHE HAD OTHER

22 CONCERNS? ANSWER: SHE DID, BUT I DON'T RECALL WHAT THEY
23 WERE. I HAVE -- ONE MINUTE, PLEASE -- THAT SHE WAS BEING

24 TREATED CAN DIFFERENT AND THAT TRAPS WERE BEING SET UP.
25

1 **BY MS. SMALLETS:**

2 **Q.** YOU ASKED MS. NEWTON TO PROVIDE NAMES OF COWORKERS THAT
3 COULD CONFIRM YOUR CONCERNS, RIGHT? COULD CONFIRM HER
4 CONCERNS?

5 **A.** I WANTED TO DO A THOROUGH INVESTIGATION ON ANY CONCERNS
6 AND I NEEDED SOME MORE SPECIFICS AND WHO WAS AROUND, ANYBODY
7 WHO WITNESSED THIS AND AT THAT TIME I WAS GIVEN NONE.

8 **Q.** SO YOU ASKED MS. NEWTON TO PROVIDE YOU WITH NAMES OF
9 COWORKERS WHO COULD CONFIRM HER CONCERNS?

10 **A.** I DID.

11 **Q.** SHE TOLD YOU SHE WAS WORRIED HER WORKERS WOULD BE
12 RETALIATED AGAINST?

13 **A.** I DON'T KNOW IF RETALIATED AGAINST. SHE JUST WANTED TO
14 TALK TO THEM BEFORE WE ASKED ANY COWORKERS QUESTIONS IS THE
15 WAY I REMEMBER IT. I DON'T -- I DON'T REMEMBER THE WORD
16 RETALIATED.

17 **Q.** TAKE A LOOK AT EXHIBIT 45 IN YOUR WITNESS BINDER.

18 **A.** OKAY.

19 **Q.** TOWARD THE END OF THE FIRST PARAGRAPH?

20 **A.** OKAY.

21 **Q.** YOU TOLD CHRISTINE LAYNE AND MIKE BECK THAT CIARA WAS
22 CONCERNED THERE WOULD BE RETALIATION FROM JEFF FISCHER TO THE
23 OTHER NEW HIRES; ISN'T THAT TRUE?

24 **A.** I DID WRITE THAT.

25 **Q.** MS. NEWTON WASN'T THE ONLY PERSON WHO HAD CONCERNS ABOUT

1 BRINGING INFORMATION TO HR, WAS SHE?

2 **MR. LAFAYETTE:** OBJECTION. IT CALLS FOR SPECULATION.
3 LACK OF FOUNDATION WITH THIS WITNESS.

4 **THE COURT:** YOU NEED TO SET SOME FOUNDATION.
5 **BY MS. SMALLETS:**

6 **Q.** MS. NEWTON WASN'T THE ONLY PERSON WHO TOLD YOU THAT THEY
7 HAD CONCERNS ABOUT GOING TO HR?

8 **A.** I DON'T RECALL ANYBODY ELSE.

9 **Q.** DIDN'T ONE OF MS. NEWTON'S COWORKERS, PATRICK NEUMAN, TELL
10 YOU THAT?

11 **MR. LAFAYETTE:** OBJECTION. FOUNDATION, HEARSAY,
12 RELEVANCE.

13 **THE COURT:** OVERRULED. SAY YES OR NO.

14 **A.** I DON'T BELIEVE PATRICK NEUMAN SAID ANYTHING ABOUT GOING
15 TO HR. BEING CONCERNED ABOUT GOING TO HR.

16 **BY MS. SMALLETS:**

17 **Q.** PATRICK NEUMAN SAID HE DIDN'T FEEL COMFORTABLE GOING TO
18 HR?

19 **A.** I DON'T EVER REMEMBER ANY OF THAT.

20 **MS. SMALLETS:** I WOULD LIKE TO READ FROM HIS
21 DEPOSITION PAGE 251, LINES 20 TO 23.

22 **MR. LAFAYETTE:** CAN I HEAR THE LAST --

23 **THE COURT:** 251, 20 TO 23. I DON'T KNOW WHAT THIS
24 REFERS TO.

25 **MS. SMALLETS:** TO MR. NEUMAN NOT BEING

1 COMFORTABLE GOING TO HR.

2 **THE COURT:** YOU ARE ASKING HIM TO READ FROM
3 SOMETHING. I DON'T KNOW WHAT DOCUMENT YOU ARE TALKING ABOUT
4 HERE. WHAT DOCUMENT IS REFERENCED IN THIS --

5 **MS. SMALLETS:** IT'S A CONVERSATION THAT MR. PEREZ AND
6 CHRIS PALACIO WITH PATRICK NEUMAN.

7 **THE COURT:** LINE 20 SAID CAN YOU READ? WHAT DOCUMENT
8 ARE YOU ASKING HIM TO READ FROM IN THIS SECTION?

9 **MR. LAFAYETTE:** IT IS PART OF THE MOTION IN LIMINE.

10 **MS. SMALLETS:** IT'S FROM NOTES THAT WERE TAKEN.
11 WE'RE NOT -- SUBSEQUENT TO HER TERMINATION. WE ARE NOT
12 ASKING ABOUT ANY OF THE....

13 **THE COURT:** NO, YOU CAN'T. MOVE ON.

14 **BY MS. SMALLETS:**

15 **Q.** MS. NEWTON NEVER TOLD YOU THAT SHE DIDN'T WANT YOU -- SHE
16 DIDN'T WANT YOU TO LOOK FURTHER INTO HER CONCERN THAT SHE
17 WAS -- WAS NOT BEING TREATED FAIRLY, RIGHT?

18 **A.** I WENT LOOKING FOR CIARA TO GET MORE INFORMATION SO I
19 COULD LOOK INTO IT.

20 **Q.** MS. NEWTON NEVER TOLD YOU SHE DIDN'T WANT YOU TO LOOK INTO
21 IT?

22 **A.** CIARA TOLD ME SHE WAS GOING TO EMAIL ME AND HR SOME OF THE
23 SPECIFICS SO WE CAN LOOK INTO --

24 **Q.** MY QUESTION FOR YOU IS: MS. NEWTON NEVER TOLD YOU WITH
25 SHE WHY DIDN'T WANT YOU TO LOOK INTO IT?

1 **A.** SHE WANTED TO TALK TO HER WORKERS FIRST BEFORE SHE GAVE ME
2 ANY KIND MUCH SPECIFICS THAT I NEEDED.

3 **Q.** YOU DIDN'T NEED MS. NEWTON'S PERMISSION TO TALK TO HER
4 COWORKERS, DID YOU?

5 **A.** I DIDN'T. I JUST DIDN'T KNOW WHO TO TALK TO.

6 **Q.** YOU DIDN'T NEED HER PERMISSION?

7 **A.** I DIDN'T NEED HER PERMISSION, THAT'S CORRECT.

8 **Q.** BUT YOU KNEW WHO WERE COWORKERS WERE, DIDN'T YOU?

9 **A.** I KNEW ALL HER COWORKERS, YES. THAT'S CORRECT.

10 **Q.** DURING THE TIME SHE TRAINED UNDER JEFF FISCHER, SHE HAD
11 THREE COWORKERS; ISN'T THAT CORRECT.

12 **A.** THAT'S CORRECT.

13 **Q.** YOU KNEW ALL OF THEIR NAMES?

14 **A.** I DID.

15 **Q.** YOU DIDN'T TALK TO ANY OF THEM, DURING HER EMPLOYMENT,
16 ABOUT THE CONCERNS SHE WAS RAISING?

17 **MR. LAFAYETTE:** OBJECTION. OVERBROAD, VAGUE, AND
18 AMBIGUOUS.

19 **THE COURT:** OVERRULED.

20 **A.** THESE -- AT WHAT DAY ARE YOU TALKING ABOUT LOOKING INTO
21 CONCERNS? I GUESS THAT WOULD HELP ME OUT.

22 **BY MS. SMALLETS:**

23 **Q.** AT ANY POINT PRIOR TO HER TERMINATION, YOU DIDN'T TALK TO
24 ANY OF THE THREE PEOPLE WHO REPORTED TO JEFF FISCHER ALONG
25 WITH MS. NEWTON ABOUT THE CONCERNS THAT -- ANY CONCERNS SHE

1 HAD?

2 **A.** WE INTERVIEWED PATRICK, CAMERON --

3 **MS. SMALLETS:** YOUR HONOR? THAT'S GOVERNED BY THE
4 MOTION IN LIMINE.

5 **THE COURT:** I'LL STRIKE THAT ANSWER. CAN YOU ANSWER
6 HER QUESTION?

7 **BY MS. SMALLETS:**

8 **Q.** DURING MS. NEWTON'S EMPLOYMENT, YOU PERSONALLY DID NOT
9 TALK TO JOSE NAVARRO ABOUT ANY CONCERNS MS. NEWTON MAY HAVE
10 HAD?

11 **A.** I -- I -- WITH REGARD TO THE TARDIES, I DID INVESTIGATE
12 ALL FOUR NEW HIRES THAT WERE --

13 **Q.** MR. FISCHER (SIC), MY QUESTION TO YOU WAS --

14 **MR. LAFAYETTE:** OBJECTION.

15 **THE COURT:** SUSTAINED. HIS NAME IS MR. PEREZ.

16 **MS. SMALLETS:** I AM SORRY.

17 **BY MS. SMALLETS:**

18 **Q.** MR. PEREZ, MY QUESTION TO YOU IS DURING YOUR EMPLOYMENT
19 YOU DIDN'T -- DURING CIARA'S EMPLOYMENT, YOU DIDN'T TALK TO
20 JOSE NAVARRO ABOUT ANY OF THE CONCERNS MS. NEWTON HAD RAISED?

21 **A.** I DON'T RECALL THAT. I DIDN'T.

22 **Q.** AND YOU DIDN'T TALK TO PATRICK NEUMAN ABOUT ANY CONCERNS
23 MS. NEWTON HAD RAISED DURING MS. NEWTON'S EMPLOYMENT BEFORE
24 SHE WAS TERMINATED?

25 **A.** I DON'T BELIEVE I DID.

1 Q. AND YOU DIDN'T TALK TO MENA EITHER, DID YOU?

2 A. I DON'T BELIEVE I DID.

3 Q. DURING THE TIME THAT MS. NEWTON WAS ON THE SHIFT REPORTING
4 TO CAMERON CURRAN, SHE HAD SIX COWORKERS, RIGHT?

5 A. CAN YOU PLEASE REPEAT THAT?

6 Q. SURE. DURING THE TIME THAT MS. NEWTON WAS ON HER SHIFT
7 AND REPORTING TO CAMERON CURRAN, SHE HAD SIX COWORKERS IN
8 OPCEN NORTH TEAM 4, DIDN'T SHE?

9 A. YES, APPROXIMATELY SIX IN THE OPCEN NORTH.

10 Q. YOU KNOW WHO THEY WERE AT THE TIME?

11 A. YES.

12 Q. AND YOU DIDN'T TALK TO ANY OF THEM EITHER, DID YOU, DURING
13 HER EMPLOYMENT ABOUT THE CONCERNS SHE HAD RAISED?

14 A. THERE WAS NEVER -- I JUST -- THERE WAS NEVER SPECIFIC
15 CONCERNS THAT CIARA BROUGHT TO ME.

16 Q. YOU KNEW THAT SHE HAD SAID SHE HAD BEEN TREATED
17 DIFFERENTLY THAN THE OTHER GUYS, CORRECT? BECAUSE YOU TOLD
18 CHRISTINE LAYNE THAT, RIGHT?

19 A. YES.

20 Q. AND YOU DIDN'T TALK TO ANY OF HER COWORKERS IN OPCEN NORTH
21 TEAM 4 ABOUT THAT ISSUE DURING HER EMPLOYMENT?

22 A. I DON'T RECALL. I DON'T BELIEVE I DID.

23 Q. ON SEPTEMBER 17TH, MS. NEWTON SENT YOU A FOLLOW-UP EMAIL,
24 CORRECT?

25 A. CAN I LOOK AT IT?

1 Q. EXHIBIT 51.

2 A. THANK YOU. OKAY.

3 Q. THIS IS AN EMAIL MS. NEWTON SENT YOU?

4 A. YES.

5 Q (By Ms. Smallets) YOUR HONOR, I WOULD LIKE TO OFFER
6 EXHIBIT 51 INTO EVIDENCE

7 MR. LAFAYETTE: NO OBJECTION, YOUR HONOR.

8 THE COURT: 51 IS ADMITTED.

9 (PLAINTIFF'S EXHIBIT 51 RECEIVED IN EVIDENCE)

10 (DISPLAYED ON SCREEN.)

11 BY MS. SMALLETS:

12 Q. MS. NEWTON REMINDED YOU THAT THE STICKER, ABOUT THE
13 STICKER THAT HAD BEEN LEFT ON HER DESK, DIDN'T SHE?

14 A. YES.

15 Q. AND SHE REMINDED YOU THAT YOU HAD PREVIOUS -- YOU HAD
16 DISCUSSED PREVIOUS INCIDENTS WHERE SHE FELT SINGLED OUT.

17 MR. LAFAYETTE: OBJECTION, YOUR HONOR. THE DOCUMENT
18 IS THE BEST EVIDENCE OF WHAT IT SAYS.

19 THE COURT: OVERRULED.

20 THE WITNESS: YES. THIS WAS ABOUT THE TARDIES.

21 BY MS. SMALLETS:

22 Q. DOES IT -- MR. PEREZ, IT DOESN'T SAY TARDIES ANYWHERE IN
23 THAT EMAIL, DOES IT?

24 A. THIS IS THE WAY I TOOK IT, THE TARDIES.

25 Q. IT DOESN'T SAY TARDIES ANYWHERE IN THAT EMAIL, DOES IT?

1 **MR. LAFAYETTE:** OBJECTION, ASKED AND ANSWERED. THE
2 BEST EVIDENCE RULE.

3 **THE COURT:** OVERRULED. ANSWER THE QUESTION.

4 **THE WITNESS:** IT DOESN'T.

5 **BY MS. SMALLETS:**

6 **Q.** IT REFERS TO THE STICKER?

7 **A.** YES.

8 **Q.** AND IT REFERS TO OTHER PREVIOUS INCIDENTS, PLURAL,
9 CORRECT?

10 **A.** YES.

11 **Q.** AND YOU KNEW FROM THIS EMAIL THAT SHE EXPECTED YOU TO
12 INVESTIGATE?

13 **A.** I TOLD CIARA THAT I WAS GOING TO LOOK INTO IT AND WE WOULD
14 PUT A STOP TO YOU.

15 **Q.** SHE SAYS YOU MENTIONED YOU WOULD INVESTIGATE THE
16 SITUATION?

17 **A.** YES, THAT IS WHAT SHE SAID.

18 **Q.** SO YOU KNEW SHE WAS EXPECTING YOU TO INVESTIGATE?

19 **A.** AT THE TIME WHEN I GOT THAT STICKER, MY WHOLE THING WAS TO
20 PUT A STOP TO IT.

21 **Q.** MR. PEREZ, MY QUESTION --

22 **MR. LAFAYETTE:** OBJECTION, YOUR HONOR. SHE CUT THE
23 WITNESS OFF.

24 **THE COURT:** WELL, HE WASN'T ANSWERING HER QUESTION.
25 GO AHEAD.

1 **BY MS. SMALLETS:**

2 **Q.** MR. PEREZ, MY QUESTION TO YOU WAS, AT THE TIME THAT YOU
3 RECEIVED THAT EMAIL ON SEPTEMBER 17TH, YOU KNEW THAT MS.
4 NEWTON WAS EXPECTING YOU TO INVESTIGATE?

5 **A.** I DID NOT KNOW THAT FROM CIARA.

6 **Q.** SHE TOLD YOU THAT YOU SAID YOU WOULD INVESTIGATE THE
7 SITUATION?

8 **A.** I JUST DON'T RECALL EVER TELLING CIARA I WAS GOING TO
9 INVESTIGATE IT. I DO RECALL THAT I SAID I WOULD LOOK INTO IT.

10 **Q.** IS LOOKING INTO IT DIFFERENT THAN INVESTIGATING?

11 **A.** YEAH.

12 **Q.** YOU FORWARDED THIS EMAIL TO MIKE BECK AND CHRISTINE LATER
13 THAT MORNING, CORRECT?

14 **A.** ON THE 29TH? AUGUST 29TH?

15 **Q.** YES.

16 **A.** YES, I BELIEVE I DID.

17 **Q.** YOU DIDN'T RESPOND TO MS. NEWTON, DID YOU?

18 **A.** SEPTEMBER 17TH ONE?

19 **Q.** RIGHT.

20 **A.** I BELIEVE I DID RESPOND TO HER. AND I TOLD -- I BELIEVE I
21 DID.

22 **Q.** YOU SENT HER AN EMAIL?

23 **A.** I BELIEVE SO.

24 **Q.** HAVE YOU SEEN A COPY OF THAT EMAIL?

25 **A.** I THOUGHT YOU GUYS HAD ONE.

1 Q. LET'S TAKE A LOOK AT EXHIBIT 50.

2 MS. NEWTON SENT YOU AN EMAIL ON SEPTEMBER 20TH SAYING, I'M
3 JUST FOLLOWING UP, CORRECT?

4 A. THAT IS CORRECT.

5 Q. EXHIBIT 50 IS AN EMAIL EXCHANGE THAT YOU PARTICIPATED IN?

6 A. YES.

7 MS. SMALLETS: I WOULD LIKE EXHIBIT 50 TO BE ADMITTED
8 INTO EVIDENCE.

9 MR. LAFAYETTE: NO OBJECTION, YOUR HONOR.

10 THE COURT: 50 IS ADMITTED.

11 (PLAINTIFF'S EXHIBIT 50 RECEIVED IN EVIDENCE)

12 (DISPLAYED ON SCREEN.)

13 BY MS. SMALLETS:

14 Q. AFTER REVIEWING THAT EMAIL, MR. PEREZ, DOES THAT REFRESH
15 YOUR RECOLLECTION THAT YOU DID NOT RESPOND TO MS. NEWTON ON
16 MS. NEWTON'S SEPTEMBER 17TH EMAIL?

17 A. MAYBE I AM MISUNDERSTANDING. ON SEPTEMBER 21ST, I DID
18 RESPOND TO CIARA.

19 Q. YOU DIDN'T RESPOND TO HER SEPTEMBER 17TH, EMAIL, DID YOU?

20 A. I AM SORRY. SEPTEMBER 17TH.

21 Q. THE ONE ON BOTTOM OF THE PAGE.

22 A. I THINK THAT WAS MY RESPONSE ON SEPTEMBER 21ST.

23 Q. SHE EMAILS YOU ON SEPTEMBER 17TH, AND THEN SHE EMAILS YOU
24 ON SEPTEMBER 20TH.

25 A. YEAH, SO... SO I'M NOT SURE IF THAT WAS MY DATE.

1 Q. MY QUESTION WAS SHE EMAILED YOU ON SEPTEMBER 17TH?

2 MR. LAFAYETTE: OBJECTION. HE IS TRYING TO ANSWER.

3 THE COURT: AND THERE WASN'T A QUESTION. SO LET'S
4 TRY TO DO THIS CIVILLY.

5 BY MS. SMALLETS:

6 Q. MR. PEREZ, MS. NEWTON EMAILS YOU ON SEPTEMBER 17TH,
7 CORRECT?

8 A. THAT IS CORRECT.

9 Q. THEN SHE EMAILS YOU AGAIN ON SEPTEMBER 20TH, CORRECT?

10 A. YES.

11 Q. AND THEN YOU RESPOND ON SEPTEMBER 21ST, CORRECT?

12 A. YES, THAT'S CORRECT.

13 Q. AND YOU FORWARDED THIS EMAIL STRING TO CHRISTINE LAYNE IN
14 HR, CORRECT?

15 A. I DID.

16 Q. AND YOU DID RESPOND TO THIS EMAIL?

17 A. YOU'RE TALKING ABOUT HER SEPTEMBER 20TH?

18 Q. YES.

19 A. YES, I DID RESPOND TO IT.

20 Q. YOU DIDN'T TELL MS. NEWTON THAT YOU NEEDED ANY ADDITIONAL
21 INFORMATION TO INVESTIGATE, DID YOU?

22 A. ON SEPTEMBER 21ST, I DON'T BELIEVE I DID.

23 Q. YOU NEVER SAID THAT TO HER AT ANY POINT AFTER AUGUST 29TH,
24 DID YOU?

25 A. THE STICKER WAS GONE AT THIS TIME. I DIDN'T -- THE

1 STICKERS CAME TO A STOP QUICKLY WHEN I FIRST FOUND OUT ABOUT
2 IT.

3 Q. MY QUESTION, MR. PEREZ IS: AT ANY POINT IN TIME AFTER
4 AUGUST 29TH, YOU DID NOT TELL MS. NEWTON THAT YOU NEEDED ANY
5 ADDITIONAL INFORMATION TO INVESTIGATE?

6 A. I DON'T BELIEVE I DID.

7 Q. THE NEXT DAY, SEPTEMBER 21ST, RICHARD METCALF SENT YOU HIS
8 240-DAY PROGRESS REPORT, CORRECT?

9 A. CAN YOU SHOW ME, PLEASE?

10 Q. EXHIBIT 60 IN YOUR WITNESS BINDER.

11 THE CLERK: SIX?

12 MS. SMALLETS: ZERO.

13 THE CLERK: SAY IT AGAIN, PLEASE?

14 MS. SMALLETS: SIX ZERO.

15 THE CLERK: OKAY.

16 THE WITNESS: YES.

17 BY MS. SMALLETS:

18 Q. IS THAT AN EMAIL THAT MR. METCALF SENT TO YOU ON
19 SEPTEMBER 21ST?

20 A. YES.

21 MS. SMALLETS: YOUR HONOR, I WOULD LIKE TO ADMIT
22 EXHIBIT 60 INTO EVIDENCE.

23 MR. LAFAYETTE: NO OBJECTION, YOUR HONOR.

24 THE COURT: 60 IS ADMITTED.
25

1 (PLAINTIFF'S EXHIBIT 60 RECEIVED IN EVIDENCE)

2 (DISPLAYED ON SCREEN.)

3 **BY MS. SMALLETS:**

4 **Q.** AT THE TIME YOU SENT THIS EMAIL -- I'M SORRY --
5 MR. METCALF SENT YOU THIS EMAIL, HE HAD BEEN SUPERVISING
6 MS. NEWTON FOR APPROXIMATELY TWO MONTHS, CORRECT?

7 **A.** I'M NOT A HUNDRED PERCENT SURE ON THAT.

8 **Q.** TAKE A LOOK AT PAGE 2 OF THIS EXHIBIT. TOWARD THE TOP IT
9 SAYS, TIME UNDER YOUR SUPERVISION.

10 DO YOU SEE THAT?

11 **A.** OKAY.

12 **Q.** DOES THAT REFRESH YOUR RECOLLECTION THAT AT THAT TIME
13 MR. METCALF HAD BEEN SUPERVISING MS. NEWTON FOR APPROXIMATELY
14 TWO MONTHS?

15 **A.** YES.

16 **Q.** AND YOU REVIEWED THE PROGRESS REVIEW THAT MR. METCALF HAD
17 SENT TO YOU, CORRECT?

18 **A.** I DID.

19 **Q.** AND YOU KNEW WHEN YOU REVIEWED THE REVIEW THAT MR. METCALF
20 WAS RECOMMENDING THAT MS. NEWTON'S -- MS. NEWTON CONTINUE AS
21 AN EQUILON EMPLOYEE.

22 **A.** NO.

23 **Q.** MR. METCALF (SIC), YOU REVIEWED THIS REVIEW, CORRECT?

24 **A.** I DID, YES.

25 **Q.** AND THIS REVIEW SAYS ON THIS REVIEW THERE'S A QUESTION

1 THAT SAYS: BASED ON YOUR KNOWLEDGE OF THE EMPLOYEE'S
2 PERFORMANCE TO DATE, SHOULD THE INDIVIDUAL CONTINUE AS AN
3 EQUILON EMPLOYEE, CORRECT?

4 A. IT DOES.

5 Q. THERE IS AN X NEXT TO THE BOX THAT SAYS YES, CORRECT?

6 A. THAT IS CORRECT.

7 Q. AND AFTER YOU RECEIVED THIS REVIEW FROM MR. METCALF, YOU
8 EMAILED HIM A RESPONSE THAT VERY MORNING, CORRECT?

9 A. YES.

10 Q. YOU TOLD MR. METCALF THAT THE TWO OF YOU NEEDED TO ALIGN
11 ON THE PROGRESS REVIEW, CORRECT?

12 A. NOT THAT ME AND HIM HAD TO ALIGN BUT HE HAD TO ALIGN WITH
13 HIS RATING AND THAT PROGRESS REPORT.

14 Q. YOU TOLD MR. METCALF BEFORE YOU ISSUE, LET'S ALIGN ON
15 CIARA'S 240 REVIEW, CORRECT?

16 A. YES.

17 Q. AND AT THAT TIME THAT YOU SENT THAT EMAIL TO MR. METCALF,
18 YOU KNEW SHELL HAD ALREADY DECIDED TO TERMINATE MS. NEWTON,
19 CORRECT?

20 A. I DON'T KNOW THE EXACT DAY THAT THEY DECIDED THAT.

21 Q. YOU PARTICIPATED IN THE DECISION?

22 A. THE RECOMMENDATION, YES.

23 Q. AND YOU MADE A RECOMMENDATION TO FIRE HER?

24 A. YES.

25 Q. AND AT THE TIME OF THAT EMAIL, YOU ALREADY MADE THAT

1 RECOMMENDATION?

2 **A.** I BELIEVE -- I'M NOT A HUNDRED PERCENT SURE BUT I BELIEVE
3 SO.

4 **Q.** YOU MADE THAT RECOMMENDATION TO MIKE BECK?

5 **A.** MIKE BECK AND HR, YES.

6 **Q.** CHRISTINE LAYNE?

7 **A.** YES.

8 **Q.** AND YOU MADE THAT RECOMMENDATION EVEN THOUGH YOU ARE NOT
9 IN A POSITION TO DIRECTLY OBSERVE MS. NEWTON'S PERFORMANCE,
10 CORRECT?

11 **A.** THERE WAS A LOT OF RED FLAGS ABOUT CIARA'S PERFORMANCE
12 THAT I LOOKED INTO.

13 **Q.** MY QUESTION TO YOU IS, WHETHER YOU WERE IN A POSITION TO
14 DIRECTLY OBSERVE HER PERFORMANCE?

15 **A.** I WASN'T ON SHIFT ROTATING WITH THEM, BUT I DIDN'T, YEAH,
16 SEE WITH MY OWN EYES, I GUESS.

17 **Q.** YOU DIDN'T RELY ON YOUR OWN INTERACTIONS WITH MS. NEWTON
18 TO DECIDE SHE SHOULD BE TERMINATED?

19 **A.** I RELIED ON ALL THE RED FLAGS FROM THE PERFORMANCE THAT I
20 SEEN OR THAT WAS LOOKED INTO.

21 **Q.** YOU DIDN'T RELY ON YOUR OWN INTERACTIONS WITH HER IN
22 DECIDING THAT SHE SHOULD BE TERMINATED?

23 **A.** WITH REGARD TO THE TARDIES, YES, I DID.

24 **Q.** YOU DID NOT PERSONALLY OBSERVE MS. NEWTON BEING TARDY,
25 CORRECT?

1 **A.** I OBSERVED THE GATE LOGS BUT I DIDN'T SEE HER COMING INTO
2 THE TURNSTILE AFTER 6:15.

3 **Q.** SO YOU DID NOT PERSONALLY OBSERVE THAT; IS THAT CORRECT?

4 **A.** THAT'S CORRECT.

5 **Q.** YOU DIDN'T PERSONALLY OBSERVE ANY OF THE INCIDENTS THAT
6 YOU ARE CLAIMING -- THAT YOU WERE CLAIMING WHICH SHE HAD POOR
7 PERFORMANCE?

8 **A.** THAT'S CORRECT.

9 **MS. SMALLETS:** I HAVE NOTHING FURTHER, YOUR HONOR, AT
10 THIS TIME.

11 **THE COURT:** ANY EXAMINATION NOW OR DO YOU WAIT?

12 **MR. LAFAYETTE:** I WILL HAVE SOME, YOUR HONOR.

13 **CROSS-EXAMINATION**

14 **BY MR. LAFAYETTE:**

15 **Q.** GOOD MORNING.

16 **A.** GOOD MORNING.

17 **Q.** YOU'VE BEEN AT THE REFINERY FOR HOW LONG?

18 **A.** SINCE JULY OF '94.

19 **Q.** SINCE JULY OF '94. DURING THE TIME YOU'VE BEEN AT THE
20 REFINERY, YOU'VE HAD TO MAKE RECOMMENDATIONS ON WHETHER OR NOT
21 PEOPLE WOULD REMAIN OR LEAVE THE REFINERY BEFORE?

22 **A.** I HAVE.

23 **Q.** AND IN THE PAST WHEN YOU'VE DONE THAT, DID YOU MAKE
24 RECOMMENDATIONS RELATING TO MEN, WHETHER OR NOT THEY WOULD
25 REMAIN OR STAY AT THE REFINERY BEFORE?

1 **A.** I HAVE.

2 **Q.** WHEN YOU DID THAT DID YOU MAKE YOUR RECOMMENDATION SOLELY
3 ON WHAT YOU SAW WITH THEM?

4 **A.** NO.

5 **Q.** WHAT DID YOU BASE YOUR RECOMMENDATION ON?

6 **A.** ONE WAS STEALING FROM THE COMPANY, REPORTING TIME HE WAS
7 COMING IN THE GATES.

8 **Q.** I DON'T WANT THE CONTENT.

9 DID YOU BASE YOUR RECOMMENDATIONS ON YOUR OBSERVATIONS
10 ONLY?

11 **A.** NO.

12 **Q.** DID YOU BASE YOUR RECOMMENDATIONS ON INFORMATION PROVIDED
13 TO YOU BY OTHER PEOPLE?

14 **A.** YES.

15 **Q.** WITH REGARD TO MAKING A RECOMMENDATION WITH REGARD TO
16 MS. NEWTON, DID YOU USE THAT SAME PROCESS BEFORE DECIDING WHAT
17 RECOMMENDATION YOU WOULD MAKE FOR HER?

18 **A.** YES.

19 **Q.** NOW, YOU'VE BEEN SHOWN EXHIBIT 60, PLAINTIFF'S EXHIBIT 60,
20 DO YOU HAVE IT THERE IN FRONT OF YOU? IN THE BINDER?

21 **A.** YES.

22 **Q.** I WOULD LIKE TO PULL IT UP FOR A SECOND.

23 **MR. LAFAYETTE:** I WILL -- WOULD LIKE TO PUT IT ON THE
24 SCREEN, YOUR HONOR.

25 **THE COURT:** YOU MAY.

(DISPLAYED ON SCREEN.)

BY MR. LAFAYETTE:

Q. RECOGNIZE EXHIBIT 60 THERE?

A. YES.

Q. OKAY. NOW, I WANT TO DIRECT YOUR ATTENTION TO SOMETHING
IN PLAINTIFF'S EXHIBIT 60. YOU SEE THAT?

A. YES.

Q. TELL ME WHAT THAT IS.

A. IT WAS SCALE OF PERFORMANCE AND SOME BEHAVIORS ON A ONE TO
FIVE SCALE WITH ONE BEING THE LOWEST.

Q. DO YOU UNDERSTAND WHETHER OR NOT THOSE WERE THE
ASSESSMENTS PREVIOUSLY PROVIDED TO YOU BY MR. METCALF?

A. YES.

Q. OKAY. SO CAN YOU TELL ME WHAT MR. METCALF'S RATING WAS
FOR HER WITH REGARD TO PERMITTING?

A. A 2.

Q. A 2. WHAT WAS HIS RATING FOR HER WITH REGARD TO WHETHER
OR NOT SHE SHOULD REMAIN IN THE REFINERY?

A. A 2.

Q. AND WHAT WAS HIS RATING FOR HER WITH REGARD TO ISOLATING?

A. A 2.

Q. NOW, WHAT IS PERMITTING?

A. PERMITTING IS THE OPERATORS WILL GIVE A PERMIT TO THE
MAINTENANCE FOLKS THAT THE EQUIPMENT IS SAFE TO WORK ON, THAT
IT HAS BEEN DEPRESSURED, PURGED OUT, AND IT IS SAFE TO OPEN UP

1 IF NEEDED.

2 Q. ALL RIGHT. AND IF THEY CAN'T DO THAT, IS THERE A RISK OF
3 HARM TO ANYONE?

4 A. YEAH. SOMEBODY COULD GET KILLED.

5 Q. SO NOW LET'S LOOK AT THIS ISSUE OF ISOLATING. WHAT IS
6 THAT ABOUT?

7 A. ISOLATING IS MAKING SURE THAT -- FOR AN EXAMPLE, WOULD BE
8 A PIECE OF A PUMP OR A PUMP -- THAT THE PUMP IS BLOCKED IN,
9 DEPRESSURED BEFORE MAINTENANCE CAN DO SOME INTRUSIVE WORK,
10 WHICH IS OPENING UP A PIECE OF PIPE.

11 Q. IF YOU DON'T DO THIS PROPERLY, IS THERE A RISK OF HARM?

12 A. SOMEBODY COULD GET KILLED.

13 Q. AND THEN YOUR LAST QUESTION HERE IS, QUESTION -- LAST
14 QUESTION ABOUT WHETHER OR NOT THE PERSON SHOULD REMAIN, AND
15 YOU GOT ANSWERS TO THAT AS WELL, RIGHT?

16 A. METCALF GAVE HER A 2.

17 Q. METCALF GAVE HER A 2. NOW, THIS SYSTEM THAT YOU USED, DID
18 YOU SEND A SIMILAR TYPE OF REQUEST TO MR. CURRAN?

19 A. I DID.

20 Q. AND DID MR. CURRAN ALSO PROVIDE YOU A RESPONSE TO THAT
21 QUESTION?

22 A. HE DID.

23 Q. AND DID YOU SEND THIS QUESTION TO MORE PEOPLE THAN TO
24 MR. CURRAN AND TO MR. METCALF?

25 A. I SENT IT TO ALL MY TEAM LEADERS IN THE TWO DEPARTMENTS

1 AND THE OTHER PRODUCTION SUPERVISORS SENT IT OUT TO THEIR TEAM
2 LEADERS.

3 Q. THIS QUESTION THAT YOU ARE ASKING, DID YOU ASK THOSE
4 QUESTIONS OF ALL OF YOUR SHIFT TEAM LEADERS FOR ALL OF THE
5 PEOPLE WHO HAD PROBATIONARY EMPLOYEES?

6 A. YES.

7 Q. AND DID YOU USE THESE RESULTS BACK FOR PURPOSES OF MAKING
8 A RECOMMENDATION TO HIRE OR NOT KEEP SOMEONE?

9 A. YES.

10 Q. NOW, DO YOU RECALL WHEN IT WAS THAT YOU FIRST SENT OUT
11 THAT REQUEST THAT PEOPLE TELL YOU -- ADVISE YOU OF HOW THEY
12 WANTED TO RATE SOMEONE?

13 A. I DON'T RECALL WHEN I SENT THE EMAIL OUT.

14 Q. YOU DON'T RECALL. OKAY.

15 WAS IT EARLIER IN SEPTEMBER?

16 YOU HAVE A BINDER UP THERE, NEW BINDER -- DID HE GET A
17 BINDER?

18 THE COURT: HE DID.

19 BY MR. LAFAYETTE:

20 Q. TAKE A LOOK IF YOU COULD AT EXHIBIT 48. THAT IS THE ONE
21 YOU ARE LOOKING AT, RIGHT?

22 A. OKAY. I GOT IT.

23 Q. YOU HAVE IT?

24 I WOULD LIKE FOR YOU TO TAKE A LOOK AND SEE IF THAT IS AN
25 EMAIL AT THE BOTTOM THAT YOU SENT ON SEPTEMBER 8, 2016?

1 **A.** IT IS.

2 **MR. LAFAYETTE:** YOUR HONOR, I WOULD LIKE TO MOVE THIS
3 DOCUMENT INTO EVIDENCE.

4 **THE COURT:** ANY OBJECTION?

5 **MS. SMALLETS:** NO.

6 **THE COURT:** IT'S ADMITTED.

7 (PLAINTIFF'S EXHIBIT 48 RECEIVED IN EVIDENCE)

8 **BY MR. LAFAYETTE:**

9 **Q.** SO EXHIBIT 48 IS A LETTER -- EMAIL THAT YOU WROTE. AND IS
10 THIS AN EMAIL WHERE YOU INVITED YOUR STL'S TO PROVIDE A RESULT
11 BACK WITH REGARD TO THE ISSUES YOU IDENTIFIED, PERMITTING
12 ATTITUDE, ISOLATING, WORK ETHIC AND EVERYTHING YOU KNOW TODAY
13 HOW LIKELY WOULD YOU BE TO HIRE?

14 **A.** YES.

15 **Q.** WHY DID YOU DO THIS?

16 **A.** I WANTED A LINE IN HOW WE SAW OUR NEW HIRES AS THEY ARE
17 COMING TO THE END OF THEIR PROBATION.

18 **Q.** AND THE TOP OF THIS PAGE, DOES IT IDENTIFY -- AND IN THIS
19 DOCUMENT, DOES THIS IDENTIFY EVERYBODY YOU SENT IT TO?

20 **A.** THOSE ARE THE TWO DEPARTMENT SHIFT TEAM LEADERS THAT I WAS
21 SUPERVISING.

22 **Q.** AND IN THIS EMAIL, WE ARE LOOKING AT, DID YOU GET A
23 RESPONSE BACK FROM MR. CURRAN?

24 **A.** I DID.

25 **Q.** AND IS MR. CURRAN'S RESPONSE ON THE SECOND PAGE? THE NEXT

1 TWO PAGES?

2 **A.** IT IS.

3 **Q.** AND THESE ARE THE COMMENTS THAT MR. CURRAN WROTE ABOUT
4 MS. NEWTON. WOULD THAT BE ACCURATE?

5 **A.** YES, THAT'S CORRECT.

6 **Q.** I WOULD LIKE TO TAKE YOU TO THE LAST PAGE OF THE EXHIBIT.
7 ARE YOU THERE WITH ME?

8 **A.** YES.

9 **Q.** I WOULD LIKE FOR YOU TO TAKE A LOOK AT THIS PASSAGE HERE
10 (INDICATING).

11 DO YOU SEE?

12 **A.** YES.

13 **Q.** THE HIGHLIGHTED LANGUAGE.

14 DID HE SAY, NO, I DON'T THINK CIARA IS A GOOD MATCH FOR
15 OPERATIONS. I AM VERY AFRAID THAT SHE WILL HURT HERSELF OR
16 SOMEONE ELSE OR POSSIBLY CAUSE A PROCESS INCIDENT. I HAVE
17 LOST SLEEP AT NIGHT FROM THE CONCERNS AS HER TSTL FEARING THAT
18 SOMETHING BAD WILL HAPPEN?

19 **A.** YES.

20 **Q.** DID YOU TAKE THAT INTO CONSIDERATION FOR PURPOSES OF
21 MAKING A DECISION AS TO WHETHER OR NOT YOU WANTED TO KEEP
22 MS. NEWTON?

23 **A.** YES.

24 **Q.** DID YOU TAKE THE OTHER COMMENTS THAT HE MADE HERE INTO
25 CONSIDERATION FOR PURPOSES OF MAKING A RECOMMENDATION TO KEEP

1 MS. NEWTON?

2 A. YES.

3 Q. NOW, WITH REGARD TO THE DECISION TO KEEP HER, DO YOU HAVE
4 THE AUTHORITY ON YOUR OWN TO FIRE SOMEONE?

5 A. NO.

6 Q. DO YOU HAVE THE AUTHORITY ON YOUR OWN TO PUSH SOMEONE OUT
7 OF PROBATION?

8 A. NO.

9 Q. SO WHEN YOU DO THIS RECOMMENDATION, DO YOU JUST SIT IN A
10 ROOM BY YOURSELF AND DO IT OR IS THERE A MEETING THAT TAKES
11 PLACE?

12 I'LL ASK YOU THIS: DID YOU CONSULT WITH MIKE BECK AND
13 CHRISTINE LAYNE?

14 A. YES.

15 Q. YOU DID? OKAY.

16 NOW, IN ADDITION TO THIS, BETWEEN -- I'M TALKING ABOUT NOW
17 THE SEPTEMBER 8TH DATE. OKAY? YOU HAD INDICATED THAT YOU MET
18 WITH MS. LAYNE -- MS. NEWTON ON THE 29TH OF SEPTEMBER,
19 CORRECT?

20 A. YES.

21 Q. YOU WERE ASKED SOME QUESTIONS ABOUT WHAT YOU DID AFTER
22 MEETING WITH HER, CORRECT?

23 A. THAT IS CORRECT.

24 MS. SMALLETS: OBJECTION, LEADING, YOUR HONOR.

25 THE COURT: SUSTAINED.

1 **BY MR. LAFAYETTE:**

2 **Q.** I WOULD LIKE FOR YOU, SIR, TO TAKE A LOOK AT A DOCUMENT,
3 EXHIBIT 45. YOU WERE ASKED IF YOU HAD COMMUNICATED WITH
4 MS. LAYNE THE DAY THE STICKER WAS FOUND.

5 REMEMBER THAT?

6 **A.** YES.

7 **Q.** DOES EXHIBIT 45 -- 45 AN EMAIL THAT YOU PREPARED ON
8 AUGUST 29, 2016, AT 9:11 A.M.?

9 **A.** YES.

10 **Q.** YOU SEND THAT TO MIKE BECK AND CHRISTINE LAYNE?

11 **A.** YES.

12 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS INTO
13 EVIDENCE, YOUR HONOR.

14 **THE COURT:** ANY OBJECTION?

15 **MS. SMALLETS:** NO.

16 **THE COURT:** 45 IS ADMITTED.

17 (PLAINTIFF'S EXHIBIT 45 RECEIVED IN EVIDENCE)

18 **THE COURT:** BE CAREFUL WITH THE LEADING QUESTIONS OR
19 I'LL START SUSTAINING OBJECTIONS.

20 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

21 (DISPLAYED ON SCREEN.)

22 **BY MR. LAFAYETTE:**

23 **Q.** IS THIS AN EMAIL THAT YOU WROTE?

24 **A.** YES.

25 **Q.** ON THE FIRST PAGE, FIRST PARAGRAPH.

1 DID YOU WRITE THIS?

2 **A.** YES.

3 **Q.** CAN YOU READ IT, PLEASE?

4 **A.** (READING)

5 I TALKED TO CIARA TODAY ABOUT THE ACCUSATIONS OF NOT BEING
6 TREATED FAIRLY. SHE SAID SHE HAS NOT TALKED TO THE OTHER NEW
7 HIRES TO GET THEIR OKAY TO BE INTERVIEWED. I TOLD HER WE NEED
8 TO INVESTIGATE IN A TIMELY MANNER IF SHE IS ACCUSING OTHERS OF
9 NOT TREATING HER FAIRLY. SHE SAID SHE WILL SEND WHAT SHE HAS
10 IN AN EMAIL TO ME AND HR. I ALSO OFFERED HER MY OFFICE IF SHE
11 WANTS TO TYPE THAT EMAIL IN PRIVATE. I TOLD HER IF WE DON'T
12 GET THIS, WE CAN'T HAVE A THOROUGH INVESTIGATION. SHE WAS
13 CONCERNED THERE WILL BE RETALIATION FROM JEFF FISCHER TO THE
14 OTHER NEW HIRES. I HAD REASSURED HER THAT WOULD NOT BE THE
15 CASE.

16 **Q.** ALL RIGHT. NOW, WHY DID YOU WRITE THAT?

17 **A.** SO THIS IS A NOTE TO CHRISTINE -- AFTER THE AUGUST 2ND
18 MEETING I WENT TO GET WHAT -- AFTER THE AUGUST 2ND MEETING
19 CIARA TOLD ME SHE WAS GOING TO TALK TO THE NEW HIRES AND GET
20 ME MORE SPECIFICS ABOUT HOW TO INVESTIGATE CERTAIN THINGS. AT
21 THAT TIME I WAS GOING TO GO ON VACATION AND SHE WAS GOING TO
22 GO ON DAYS OFF.

23 **Q.** ASIDE FROM SAYING THAT SHE THOUGHT SHE WAS TREATED
24 DIFFERENTLY, DID SHE EVER GIVE YOU SOME SPECIFIC DETAILS ABOUT
25 HOW SHE WAS TREATED DIFFERENTLY?

1 **A.** NO.

2 **Q.** DID SHE EVER GIVE YOU SOME DATES ON WHEN IT WAS SHE
3 THOUGHT SHE WAS TREATED DIFFERENTLY?

4 **A.** NO.

5 **Q.** DID SHE EVER TELL YOU WHO IT WAS THAT SHE SAID HAD
6 ACTUALLY TREATED HER DIFFERENTLY?

7 **MS. SMALLETS:** OBJECTION, YOUR HONOR.

8 **THE COURT:** SUSTAINED.

9 **BY MR. LAFAYETTE:**

10 **Q.** AT ANY POINT IN TIME DID SHE EVER TELL YOU WHO IT WAS THAT
11 TREATED HER DIFFERENTLY?

12 **A.** THERE WAS NEVER ANY SPECIFICS ON DETAILS AND THAT IS WHAT
13 I WAS LOOKING FOR.

14 **Q.** ALL RIGHT.

15 DID YOU GET IT AFTER -- THE SPECIFICS THAT YOU'RE TALKING
16 ABOUT, DID YOU EVER GET THEM AFTER SEPTEMBER 29?

17 **A.** NO, I NEVER GOT ANY.

18 **Q.** OKAY. DID YOU EVER GET ANYTHING SPECIFIC THAT YOU COULD
19 ACTUALLY LOOK INTO?

20 **A.** YES.

21 **Q.** WHAT WAS THAT?

22 **A.** I RAN GATE LOGS ON ALL FOUR NEW HIRES.

23 **Q.** WAS THAT IN CONNECTION WITH THE TARDIES?

24 **A.** YES.

25 **Q.** OKAY. NOW, THERE IS MORE IN THIS DOCUMENT THAN THAT. SO

1 LET'S TALK ABOUT THE 29TH.

2 WHERE DID THIS MEETING TAKE PLACE?

3 **A.** ME AND CIARA WERE IN THE SHIFT TEAM LEADER'S OFFICE IN THE
4 OPCEN CONTROL CENTER.

5 **Q.** IS THAT YOUR NORMAL OFFICE?

6 **A.** NO. IT IS ACROSS THE REFINERY.

7 **Q.** SO WHY WERE YOU THERE THAT MORNING?

8 **A.** I SPECIFICALLY CAME TO SEE CIARA, TALK ABOUT THE DETAILS,
9 SPECIFICS THAT SHE SAID SHE WAS GOING TO GIVE ME AFTER SHE
10 CAME BACK FROM HER DAYS OFF.

11 **Q.** OKAY.

12 AND SO AFTER THAT MEETING WHERE YOU TALKED ABOUT THE
13 SUBJECT THAT WE JUST BEEN LOOKING AT, DID YOU HAVE ANOTHER
14 INTERACTION WITH HER THAT DAY?

15 **A.** YES. SO SHE LEFT THE OFFICE, AND THEN SHE CAME BACK IN
16 AND SHE HANDED ME A STICKER AND THAT WAS THE STICKER THAT WAS
17 SHOWN.

18 **Q.** AND DID YOU INCLUDE THAT ENCOUNTER IN THE EMAIL THAT YOU
19 SENT THAT DAY?

20 **A.** YES.

21 **Q.** CALLED OUT SOMETHING ON THE DOCUMENT. IS THIS A -- CAN
22 YOU TELL ME WHAT THIS IS?

23 **A.** IT WAS JUST LETTING CHRISTINE KNOW THAT SHE HAD BROUGHT ME
24 A STICKER. AND I ALSO ASKED FOR -- IF -- I WAS GOING TO SEND
25 AN EMAIL OUT TO THE SHIFT TEAM LEADERS TO PUT A STOP IT, TALK

1 TO THEIR TEAMS, AND SAID THAT AN EMAIL SHOULD BE SENT FROM
2 MIKE BECK. I WAS OKAY WITH THAT.

3 Q. DO YOU SEE THIS PHRASE HERE THAT I'M UNDERSCORING....

4 A. YES.

5 Q. TELL ME WHAT THAT'S ABOUT.

6 A. SHE SAID SHE DIDN'T NOTICE IT WHEN SHE CAME INTO WORK BUT
7 HAD NOTICED IT AFTER SHE CAME BACK TO HER DESK.

8 Q. OKAY. DOES SHE SAY ANYTHING ELSE ABOUT IT?

9 A. NO.

10 Q. THE STICKER?

11 A. NO SPECIFICS, NO.

12 Q. DID SHE TELL YOU PEOPLE WERE LOOKING AT HER STRANGELY?

13 A. I DON'T RECALL THAT, NO.

14 MS. SMALLETS: OBJECTION --

15 THE COURT: SUSTAINED.

16 BY MR. LAFAYETTE:

17 Q. AT ANY POINT IN TIME DID SHE EVER SAY WORDS TO THE EFFECT
18 OF -- DID SHE TELL YOU HOW PEOPLE WERE TREATING HER WHEN SHE
19 SAW IT?

20 A. WHEN SHE SAW THE STICKER?

21 Q. YEAH.

22 A. I DON'T RECALL THAT.

23 Q. AT ANY POINT IN TIME -- SO WHAT DID YOU TELL HER WITH
24 REGARD TO THE STICKER?

25 A. I APOLOGIZED TO HER.

1 Q. OKAY. READ THE REST OF WHAT YOU WROTE.

2 IS THAT ACCURATE? DOES THAT ACCURATELY DESCRIBE WHAT YOU
3 DID THEREAFTER?

4 MS. SMALLETS: OBJECTION.

5 THE COURT: WHAT IS THE OBJECTION?

6 MS. SMALLETS: THAT SENTENCE.

7 THE COURT: IT'S OVERRULED.

8 THE WITNESS: YOU'RE TALKING ABOUT THE SECOND
9 PARAGRAPH?

10 BY MR. LAFAYETTE:

11 Q. YES.

12 A. WHAT WAS YOUR QUESTION, GARY?

13 Q. DOES THE REST OF THIS ACCURATELY DESCRIBE WHAT YOU SAID
14 HAPPEN THERE? WHAT HAPPENED IN THAT SECOND ENCOUNTER?

15 A. YES.

16 Q. OKAY. NOW, AFTER YOU DID THAT, DID YOU SEND ANOTHER EMAIL
17 OUT TO SOMEONE?

18 A. I EMAILED HR AND MY MANAGER, MIKE BECK.

19 Q. OKAY. AFTER YOU EMAILED THEM -- TAKE A LOOK AT
20 EXHIBIT 46.

21 MR. LAFAYETTE: I BELIEVE 46 IS IN EVIDENCE, YOUR
22 HONOR?

23 THE COURT: IT IS.

24 (DISPLAYED ON SCREEN.)

1 **BY MR. LAFAYETTE:**

2 **Q.** YOU WERE ASKED SOME QUESTIONS ABOUT THE PASSAGE THAT YOU
3 WROTE HERE AND I WANT TO ASK YOU SOMETHING ABOUT IT.

4 YOU SEE WHERE IT SAYS, NO NEED TO DOCUMENT IN THE PD FILES
5 BUT HAVE THE CONVERSATION WITH YOUR TEAMS?

6 **A.** YES.

7 **Q.** WHAT DID YOU MEAN BY THAT?

8 **A.** NO NEED TO DOCUMENT THEM TALKING TO THEIR TEAMS. I SEEN
9 BLANKET PD'S WHERE IT ACTUALLY BECOMES INEFFECTIVE AND YOU CAN
10 GET SOME WORKERS THAT ARE MORE DISGRUNTLED THAT THEY HAD
11 NOTHING TO DO WITH NOTHING AND THEY ARE GETTING SOMETHING IN
12 THEIR PD FILE. SO I CHOSE TO HAVE THE TEAM LEADERS NOT
13 DOCUMENT THE CONVERSATION THEY HAD WITH THEIR TEAMS.

14 **Q.** NOW, AN ISSUE WITH OTHER DOCUMENTS THAT WERE SHOWN TO YOU.
15 YOU WERE ASKED ABOUT SOMETHING THAT HAPPENED ON AUGUST 2.

16 DID YOU ATTEND A MEETING WITH MS. NEWTON ON AUGUST 2?

17 **A.** YES.

18 **Q.** AT THE AUGUST 2 MEETING, WHO ELSE WAS PRESENT?

19 **A.** HR CHRISTINE LAYNE, UNION STEWARD NICK BACKENS, UNION
20 STEWARD RAY JONES, AND CIARA NEWTON.

21 **Q.** AND DID YOU PREPARE TALKING POINTS FOR THAT MEETING ON
22 AUGUST 2?

23 **A.** YES.

24 **Q.** PRIOR TO THAT MEETING, DID YOU TALK TO MS. NEWTON TO LET
25 HER KNOW THE MEETING WAS GOING TO TAKE PLACE?

1 **A.** I BELIEVE I DID.

2 **Q.** AND DID YOU ASK MS. NEWTON ABOUT WHETHER OR NOT SHE HAD
3 ANY INFORMATION THAT ABOUT BEING TREATED ARE DIFFERENTLY?

4 **A.** YES.

5 **Q.** YOU DID?

6 **A.** ON AUGUST 2ND, YES.

7 **Q.** AND DID SHE TELL YOU WHAT SHE INTENDED TO DO?

8 **A.** SHE DID.

9 **Q.** WHAT DID SHE SAY?

10 **A.** AT THE AUGUST 2ND MEETING, SHE WANTED TO TALK TO HER
11 COWORKERS TO LET THEM KNOW THAT THEY MAY BE INTERVIEWED.

12 **Q.** I WOULD LIKE FOR YOU TO TAKE A LOOK AT EXHIBIT 41, PLEASE.
13 IS EXHIBIT 41 AN EMAIL THAT YOU WROTE ON AUGUST 1?

14 **A.** YES.

15 **Q.** WHO DID YOU SEND IT TO?

16 **A.** CHRISTINE LAYNE AND I CC'D MIKE BECK, MY MANAGER.

17 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS INTO
18 EVIDENCE, YOUR HONOR.

19 **THE COURT:** ANY OBJECTION?

20 **MS. SMALLETS:** NO.

21 **THE COURT:** ADMITTED.

22 (PLAINTIFF'S EXHIBIT 41 RECEIVED IN EVIDENCE)

23 (DISPLAYED ON SCREEN.)

24 **THE COURT:** YOU HAVE THREE MINUTES AND THEN WE WILL
25 TAKE A BREAK.

1 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

2 **BY MR. LAFAYETTE:**

3 **Q.** IN THIS EMAIL I DISCUSS WITH CIARA THAT WE WILL BE OUT
4 TOMORROW AT 9:00 A.M. TO DISCUSS THE FINDINGS OF THE
5 INVESTIGATION.

6 CAN YOU READ WHAT YOU WROTE AFTER THAT?

7 **A.** YEAH. (READING.)

8 WE'LL BE LOOKING INTO ALLEGATIONS OF SINGLING HER OUT AND
9 TREATING HER DIFFERENT. SHE HAS NOTES SHE HAS BEEN TAKING OF
10 THE INEQUALITY THAT SHE WILL BRING IN.

11 **Q.** OKAY. ON THE NEXT DAY DOES SHE BRING IN ANY NOTES
12 WHATSOEVER SHOWING THESE INEQUALITIES?

13 **A.** NO.

14 **Q.** ON THE NEXT DAY, DOES SHE IDENTIFY WITH ANY DEGREE OF
15 SPECIFICITY ANY EVENTS OF INEQUALITY?

16 **A.** NO.

17 **MS. SMALLETS:** OBJECTION. LEADING. SORRY.

18 **THE COURT:** HE ALREADY SAID NO. AGAIN, YOU ARE
19 WARNED ON THE LEADING.

20 **MR. LAFAYETTE:** I DON'T....

21 **THE COURT:** YOU CAN ASK HIM WHAT HAPPENED. THAT
22 WOULD BE DIFFERENT THAN LEADING.

23 KEEP GOING.

24 **BY MR. LAFAYETTE:**

25 **Q.** DID SHE DO ANYTHING RELATING TO HER PRESENTATION OF FACTS

1 DURING THAT MEETING ABOUT ANY SPECIFIC INCIDENCES OF
2 INEQUALITIES?

3 **A.** SHE DIDN'T, BEING HR HAD ASKED HER ABOUT IT.

4 **MR. LAFAYETTE:** YOUR HONOR, I COULD BREAK HERE. IT
5 IS UNDER THREE MINUTES.

6 **THE COURT:** THAT'S FINE. OKAY. LADIES AND
7 GENTLEMEN, WE WILL TAKE OUR SECOND BREAK OF THE DAY AND WE
8 WILL BE BACK IN 15 MINUTES. STAND IN RECESS.

9 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

10 **THE COURT:** THE RECORD WILL REFLECT THE JURY HAS LEFT
11 THE COURTROOM. 15 MINUTES.

12 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

13 (RECESS TAKEN AT 11:45 A.M.; RESUMED AT 11:57 A.M.)

14 **THE CLERK:** REMAIN SEATED.

15 **MS. SMALLETS:** WE WORKED IT OUT. THANK YOU.

16 **THE COURT:** YOU'VE WORKED IT OUT?

17 OKAY.

18 (PAUSE IN THE PROCEEDINGS.)

19 **THE COURT:** FRANCES, BRING THE JURY BACK IN.

20 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

21 **THE COURT:** OKAY. WE ARE BACK ON THE RECORD.

22 THE RECORD WILL REFLECT THE JURY IS BACK AND THEY NOW ARE
23 FILING IN IN ORDER. SEE, IT DIDN'T TAKE BUT TWO BREAKS FOR
24 YOU TO GET IT. SMART LEARNERS.

25 OKAY. YOU MAY PROCEED.

1 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

2 **BY MR. LAFAYETTE:**

3 **Q.** MR. PEREZ, I'M ASKING YOU A QUESTION NOW ABOUT AUGUST 29,
4 OKAY?

5 ON AUGUST 29, WHEN THE STICKER INCIDENT AROSE, WHERE WAS
6 MR. CURRAN WORKING?

7 **A.** I DON'T KNOW WHAT SHIFT HE WAS ON AT THAT TIME.

8 **Q.** WAS HE THERE THAT DAY?

9 **A.** I DON'T BELIEVE SO.

10 **Q.** OKAY. AND MR. FISCHER, WHAT WAS HIS ROLE AT THE TIME?

11 **A.** I BELIEVE HE WAS ON STRAIGHT DAYS IN ANOTHER BUILDING.

12 **Q.** ON STRAIGHT DAYS IN ANOTHER BUILDING. SO WAS HE --

13 **MS. SMALLETS:** OBJECTION.

14 **THE COURT:** OVERRULED.

15 **BY MR. LAFAYETTE:**

16 **Q.** WAS HE IN OPCEN AT THAT TIME IN THE BUILDING?

17 **A.** I DON'T BELIEVE SO.

18 **Q.** NOW YOU WERE ASKED SOME QUESTIONS ABOUT A DOCUMENT, I
19 THINK WAS REFERRED TO AS EXHIBIT 30.

20 DO YOU HAVE EXHIBIT 30 UP THERE? DO YOU RECOGNIZE WHAT
21 EXHIBIT 30 IS?

22 **THE COURT:** I DON'T HAVE EXHIBIT 30 AS BEING
23 REFERENCED.

24 WAS IT REFERENCED?

25 **MS. SMALLETS:** NO, YOUR HONOR. BEYOND THE SCOPE.

1 **THE COURT:** IT IS BEYOND THE SCOPE.

2 **MR. LAFAYETTE:** I JUST MADE A MISTAKE, YOUR HONOR.
3 I'M NOT TRYING TO PULL SOMETHING THAT IT'S NOT.

4 SORRY.

5 (PAUSE IN THE PROCEEDINGS.)

6 **BY MR. LAFAYETTE:**

7 **Q.** EXHIBIT 31. CAN YOU LOOK AT EXHIBIT 31?

8 **A.** YES.

9 **Q.** OKAY. IS THAT AN EMAIL THAT YOU WROTE?

10 **A.** YES.

11 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE EXHIBIT 31 INTO
12 EVIDENCE, YOUR HONOR.

13 **THE COURT:** ANY OBJECTION?

14 **MS. SMALLETS:** NO, YOUR HONOR.

15 **THE COURT:** 31 IS ADMITTED.

16 (PLAINTIFF'S EXHIBIT 31 RECEIVED IN EVIDENCE)

17 **BY MR. LAFAYETTE:**

18 **Q.** (READING)

19 THANKS -- FIRST, THANKS FOR INVESTIGATING THE TANK
20 SAMPLING AND TARDY OF CIARA.

21 DO YOU KNOW WHAT THAT IS IN REFERENCE TO, THAT SENTENCE?

22 **A.** SO I HAD GUY ROZAR AND CAMERON CURRAN TALK TO CIARA ABOUT
23 THESE -- ABOUT THE TANK, THE SAMPLING, AND THE TARDIES.

24 **Q.** ALL RIGHT. DO YOU RECALL WHEN THEY DID THAT?

25 **A.** I BELIEVE IT WAS ON THE 22ND OF JULY.

1 Q. SO PRIOR TO THE 22ND OF JULY, HAD MS. NEWTON EVER COME TO
2 YOU AND SAID SHE THOUGHT SHE WAS BEING TREATED DIFFERENTLY IN
3 THE WORKPLACE?

4 A. NO.

5 Q. WHAT WAS THE SOURCE OF YOUR... WHATEVER KNOWLEDGE YOU HAD
6 ABOUT THAT, WHERE DID YOU GET IT FROM?

7 A. IT WAS FROM THE INVESTIGATION THAT CAMERON AND GUY ROZAR
8 WHEN THEY TALKED TO CIARA.

9 Q. PRIOR TO THIS EMAIL OF JULY 26 AT 6:21 A.M., HAD YOU EVER
10 HAD ANY DIRECT COMMUNICATION WITH MS. NEWTON ABOUT THE ISSUES
11 WHICH ARE RAISED IN THIS EMAIL?

12 A. NO.

13 Q. WHAT WAS THE SOURCE OF YOUR INFORMATION WITH REGARD TO THE
14 ISSUES RAISED IN THIS EMAIL?

15 A. FROM THE INVESTIGATION THAT GUY ROZAR AND CAMERON HAD WITH
16 CIARA.

17 Q. RIGHT HERE, "I AM LOOKING MORE INTO THE TARDIES".
18 DO YOU SEE THAT?

19 A. YES.

20 Q. DID YOU DO THAT?

21 A. I DID.

22 Q. DID YOU DO THAT PRIOR TO AUGUST 2?

23 A. YES, I DID.

24 Q. AND WHAT DID YOU DO TO LOOK INTO THAT ISSUE?

25 MS. SMALLETS: OBJECTION.

1 **THE COURT:** WHAT IS THE OBJECTION?

2 **MS. SMALLETS:** BEYOND THE SCOPE.

3 (DISPLAYED ON SCREEN.)

4 **THE COURT:** IT IS BEYOND THE SCOPE.

5 **MR. LAFAYETTE:** I'LL LEAVE IT, YOUR HONOR --

6 **THE COURT:** ARE YOU BRINGING HIM BACK?

7 **MR. LAFAYETTE:** I'M BRINGING HIM BACK. I'LL COVER IT
8 THEN, YOUR HONOR.

9 **THE COURT:** YOU CAN TAKE THAT OFF.

10 **BY MR. LAFAYETTE:**

11 **Q.** SO NOW GOING BACK TO THE MEETING ON AUGUST 2, DID YOU
12 COVER THE TARDIES IN THE MEETING ON AUGUST 2?

13 **A.** YES.

14 **Q.** DID YOU -- WHAT DID YOU EXPLAIN TO MS. NEWTON RELATIVE TO
15 WHAT YOU FOUND RELATING TO THE TARDIES IN THAT MEETING ON
16 AUGUST 2?

17 **MS. SMALLETS:** OBJECTION, ASSUMES FACTS NOT IN
18 EVIDENCE.

19 **THE COURT:** OVERRULED.

20 I SAID OVERRULED. YOU CAN ANSWER.

21 **THE WITNESS:** CAN YOU PLEASE REPEAT THAT?

22 **BY MR. LAFAYETTE:**

23 **Q.** WHAT DID YOU EXPLAIN TO HER YOU FOUND RELATIVE TO THE --
24 YOUR INQUIRY WITH REGARD TO THE TARDIES?

25 **A.** I EXPLAINED TO CIARA I WASN'T GOING TO COUNT NO TARDIES

1 PAST 6:15 -- I WAS GOING TO COUNT TARDIES ANYTHING THAT WAS IN
2 THE GATE LOG AT 6:15 OR GREATER.

3 I WENT FROM MARCH 7TH, I BELIEVE, TO APRIL 15TH OR
4 SOMEWHERE AROUND THERE, AND FOUND CIARA WAS TARDY SIX TIMES.

5 Q. DID YOU TELL HER ANYTHING ABOUT HOW MANY TIMES THAT SHE
6 HAD ACTUALLY BEEN NOTED AS TARDY IN HER PD LOG?

7 A. I BELIEVE WE DID, AND IT WAS TWO TIMES SHE WAS NOTED IN
8 HER PD FILE THAT SHE WAS TARDY OUT OF THE SIX.

9 Q. DID YOU HAVE A CONVERSATION WITH HER ABOUT WHAT YOUR
10 INQUIRY FOUND RELATIVE TO HER THREE PROBATIONARY COWORKERS?

11 A. I DON'T BELIEVE I SHARED THAT WITH HER.

12 Q. ALL RIGHT. I'M NOT GOING TO ASK YOU NOW, BUT YOU DID FIND
13 SOMETHING ABOUT THEM AS WELL, RIGHT?

14 A. YES, I DID.

15 MS. SMALLETS: OBJECTION.

16 BY MR. LAFAYETTE:

17 Q. DID YOU HAVE A CONVERSATION WITH HER ABOUT THE BAKER TANK
18 ON AUGUST 2ND?

19 A. YES.

20 Q. DID YOU HAVE A CONVERSATION WITH HER ABOUT THE DRAEGER
21 TUBES ON AUGUST 2ND?

22 A. YES.

23 Q. DID YOU HAVE A CONVERSATION WITH HER ABOUT SOMETHING
24 CALLED BUMPING THE PUMP ON AUGUST 2ND?

25 A. YES.

1 Q. AND DID YOU OFFER HER AN OPPORTUNITY TO EXPLAIN HER SIDE
2 OF WHATEVER IT IS THAT HAD HAPPENED WITH REGARD TO THE BAKER
3 TANK, THE BUMPING OF THE PUMP, AND THE DRAEGER TUBES?

4 A. YES.

5 Q. DID YOU TAKE NOTES DURING THAT MEETING?

6 A. I BELIEVE I READ STRAIGHT OFF THE DOCUMENT AND CHRISTINE
7 LAYNE FROM HR WAS TAKING THE NOTES.

8 MR. LAFAYETTE: I THINK, YOUR HONOR, I WILL RESERVE
9 THE REST OF MY QUESTIONS FOR THIS WITNESS IN MY CASE-IN-CHIEF.

10 THE COURT: OKAY. ANY RE-EXAMINATION FROM THE
11 PLAINTIFF?

12 MS. SMALLETS: YES, YOUR HONOR.

13 **REDIRECT EXAMINATION**

14 BY MS. SMALLETS:

15 Q. MR. PEREZ, MR. LAFAYETTE ASKED YOU ABOUT THE INVESTIGATION
16 YOU DID INTO THE TARDIES.

17 MS. NEWTON'S PD LOG SHOWED THAT SHE WAS TARDY ON
18 APRIL 7TH, CORRECT?

19 A. I BELIEVE SO.

20 Q. YOUR INVESTIGATION SHOWED THAT SHE WAS NOT TARDY ON
21 APRIL 7TH, CORRECT?

22 A. I BELIEVE THAT WOULD BE A TYPO.

23 Q. BUT SHE WASN'T TARDY ON APRIL 7TH, CORRECT?

24 A. YES.

25 Q. MR. LAFAYETTE ALSO ASKED YOU ABOUT THE OTHER EMPLOYEES

1 THAT YOU RECOMMENDED BE TERMINATED.

2 DO YOU RECALL THAT?

3 A. YES.

4 Q. YOU RECOMMENDED THAT ONE EMPLOYEE BE TERMINATED FOR
5 STEALING FROM THE COMPANY, CORRECT?

6 A. YES.

7 Q. AND THAT PERSON WAS USING THE COMPANY CREDIT CARD FOR
8 PERSONAL EXPENSES, CORRECT?

9 A. YES.

10 Q. AND YOU RECOMMENDED THAT ANOTHER PERSON BE TERMINATED FROM
11 THE COMPANY, CORRECT?

12 MR. LAFAYETTE: OBJECTION, YOUR HONOR.

13 THE COURT: WHAT IS THE OBJECTION?

14 MR. LAFAYETTE: OUTSIDE THE SCOPE. AND I ALSO HAVE
15 AN OBJECTION THAT I'M NOT -- I THINK IT'S A RELEVANCY
16 OBJECTION THAT I THINK IS MORE SPECIFICALLY TALKED ABOUT
17 ELSEWHERE. AND I SPOKE ABOUT THIS WITH COUNSEL EARLIER TODAY.
18 AND I --

19 THE COURT: ENOUGH. I'VE HEARD ENOUGH.

20 CAN YOU ANSWER THAT QUESTION "YES" OR "NO"?

21 THE WITNESS: SAY IT AGAIN PLEASE?

22 BY MS. SMALLETS:

23 Q. YOU RECOMMENDED ANOTHER PERSON BE TERMINATED?

24 A. YES.

25 Q. AND YOU RECOMMENDED THAT THAT PERSON BE TERMINATED BECAUSE

1 THEY WERE BEING PAID FOR HOURS THEY DIDN'T WORK, CORRECT?

2 **A.** YES.

3 **Q.** AND MS. NEWTON WAS NEVER PAID FOR HOURS SHE DIDN'T WORK,
4 CORRECT?

5 **MR. LAFAYETTE:** OBJECTION, THIS IS OUTSIDE THE SCOPE.

6 **THE COURT:** OVERRULED.

7 **MR. LAFAYETTE:** I ALSO HAVE A CONTINUING RELEVANCY
8 OBJECTION --

9 **THE COURT:** ALL RIGHT. I HEARD IT. OVERRULED ON
10 THAT ONE QUESTION.

11 GO AHEAD, ANSWER.

12 **THE WITNESS:** CAN YOU PLEASE REPEAT?

13 **BY MS. SMALLETS:**

14 **Q.** MS. NEWTON WASN'T EVER PAID FOR HOURS SHE DIDN'T WORK,
15 CORRECT?

16 **A.** SHE WAS.

17 **Q.** PLEASE TAKE A LOOK AT EXHIBIT 26 IN YOUR EXHIBIT BINDER.

18 **MR. LAFAYETTE:** OUTSIDE THE SCOPE.

19 **THE COURT:** HOLD ON.

20 **MS. SMALLETS:** I'M SORRY, YOUR HONOR?

21 **THE COURT:** I SAID, "HOLD ON."

22 (PAUSE IN THE PROCEEDINGS.)

23 **THE COURT:** THE OBJECTION IS OVERRULED. GO AHEAD,
24 ASK A QUESTION.

1 **BY MS. SMALLETS:**

2 **Q.** MR. PEREZ, ON -- YOU RECEIVED AN EMAIL FROM CAMERON CURRAN
3 ON JULY 25TH. DO YOU RECALL THAT?

4 **A.** YES.

5 **MS. SMALLETS:** YOUR HONOR, I WOULD MOVE EXHIBIT 26 BE
6 ADMITTED INTO EVIDENCE.

7 **THE COURT:** OBJECTIONS?

8 **MR. LAFAYETTE:** NO, YOUR HONOR. MY CONTINUING
9 OBJECTION IS IT'S OUTSIDE THE SCOPE.

10 **THE COURT:** OKAY.

11 **MS. SMALLETS:** ON JULY 25TH --

12 **THE COURT:** ARE YOU GOING TO LET ME RESPOND?

13 **MS. SMALLETS:** I'M SORRY. I APOLOGIZE.

14 **THE COURT:** IT'S ADMITTED. GO AHEAD.

15 (PLAINTIFF'S EXHIBIT 26 RECEIVED IN EVIDENCE)

16 **BY MS. SMALLETS:**

17 **Q.** ON JULY 25TH, MR. CURRAN TOLD YOU THAT MS. NEWTON CAME IN
18 ON THURSDAY TO MAKE UP THE REST OF THE TIME SHE SWAPPED WITH
19 HERSELF, CORRECT?

20 (DISPLAYED ON SCREEN.)

21 YOU LOOK AT THE EMAIL THAT HE SENT YOU?

22 **A.** YES, THAT'S CORRECT.

23 **MS. SMALLETS:** I HAVE NOTHING FURTHER AT THIS TIME,
24 YOUR HONOR.

25 **THE COURT:** ANY OTHER QUESTIONS FROM THE DEFENSE?

1 **MR. LAFAYETTE:** YES, YOUR HONOR.

2 **RECROSS-EXAMINATION**

3 **BY MR. LAFAYETTE:**

4 **Q.** HOW LONG IS A SHIFT?

5 **A.** A SHIFT IS 12 HOURS.

6 **Q.** 12 HOURS.

7 DID -- WAS THERE SUPPOSED TO BE A SWAP, SHIFT SWAP FOR
8 MS. NEWTON?

9 **A.** WE LET CIARA SHIFT SWAP WITH HERSELF, 12 HOURS FOR 12
10 HOURS.

11 **Q.** YOU SAID "SWAP SHIFT HERSELF". I DON'T UNDERSTAND THAT.
12 CAN YOU EXPLAIN THAT?

13 **A.** CIARA HAD A WEDDING, BRIDAL, OR SOMETHING TO GO TO, OR
14 WEDDING, AND SHE WAS ON HER WAY AND SHE WASN'T GOING TO COME
15 IN TO WORK.

16 **Q.** ALL RIGHT. AND SHE WASN'T GOING TO COME IN TO WORK.

17 WHEN YOU NORMALLY DO A SWAP, DO YOU SWAP WITH YOURSELF OR
18 DO YOU SWAP WITH SOMEONE ELSE?

19 **A.** NORMALLY IT IS WITH SOMEONE ELSE.

20 **Q.** CAN YOU TELL US HOW A SWAP WITH SOMEONE ELSE WORKS?

21 **A.** WE'LL GIVE YOU THE DAY OFF -- OR YOU WOULD WORK A DAY FOR
22 THE OTHER OPERATOR AND THE OPERATOR WORKS A DAY FOR YOU.

23 **Q.** OKAY. AND DO YOU HAVE TO GET ANY APPROVALS TO DO THAT?

24 **A.** YES. NORMALLY THE SHIFT TEAM LEADERS CAN APPROVE THIS.

25 **Q.** NOW, WAS THERE A -- WITH REGARD TO THE DAYS THAT

1 MS. NEWTON WAS GOING TO SWAP WITH HERSELF, DID SHE MAKE UP
2 BOTH OF THE TWO-HOUR SHIFTS?

3 A. SHE DID NOT.

4 Q. SHE DID NOT.

5 A. SHE WAS SHORT ON ONE OF THE DAYS.

6 Q. OKAY. AND HOW MANY HOURS WAS SHE SHORT ON ONE OF THE
7 DAYS?

8 A. SHE SHOWED THAT SHE WORKED TEN AND A HALF HOURS AND WE
9 PAID HER FOR 12.

10 MR. LAFAYETTE: NO FURTHER QUESTIONS, YOUR HONOR.

11 THE COURT: ANYTHING ON THOSE QUESTIONS?

12 MS. SMALLETS: NO, YOUR HONOR.

13 THE COURT: MR. PEREZ, YOU MAY STEP DOWN. I BELIEVE
14 WE WILL BE SEEING YOU LATER.

15 THE WITNESS: THANK YOU.

16 THE COURT: NEXT WITNESS.

17 MS. NUGENT: YOUR HONOR, THE PLAINTIFF CALLS BILL
18 WESSELMAN.

19 THE CLERK: SORRY. IF YOU WILL STAND.

20 (WILLIAM WESSELMAN, CALLED AS A WITNESS FOR THE PLAINTIFF,
21 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

22 THE WITNESS: YES.

23 THE CLERK: PLEASE BE SEATED. MOVE THE CHAIR UP AND
24 THE MIC UP. THEN PLEASE STATE YOUR FULL NAME AND SPELL YOUR
25 LAST NAME.

1 **THE WITNESS:** WILLIAM WESSELMAN, W-E-S-S-E-L-M-A-N.

2 **THE COURT:** GOOD MORNING -- GOOD AFTERNOON.

3 **THE WITNESS:** GOOD AFTERNOON.

4 **THE COURT:** YOU MAY PROCEED.

5 **DIRECT EXAMINATION**

6 **BY MS. NUGENT:**

7 **Q.** GOOD AFTERNOON, MR. WESSELMAN. I'VE BEEN HAVING THE
8 OPPOSITE PROBLEM; I'VE BEEN GETTING TOO CLOSE. SO WE WILL
9 WORK IT OUT.

10 DID YOU RECEIVE A SUBPOENA TO TESTIFY TODAY?

11 **A.** I DID.

12 **Q.** WHERE DO YOU WORK?

13 **A.** AT SHELL REFINERY IN MARTINEZ.

14 **Q.** HOW LONG HAVE YOU WORKED AT THAT SHELL REFINERY IN
15 MARTINEZ?

16 **A.** ALMOST THREE YEARS.

17 **Q.** WHEN DID YOU START?

18 **A.** IN JANUARY OF '06 -- '16.

19 **Q.** JANUARY 2016?

20 **A.** YES.

21 **Q.** WERE YOU IN CIARA NEWTON'S NEW HIRE CLASS?

22 **A.** YES.

23 **Q.** THAT'S HOW YOU KNOW HER?

24 **A.** YES.

25 **Q.** WHAT DID YOU DO BEFORE YOU WORKED AT THE REFINERY IN

1 MARTINEZ.

2 A. I WORKED AS A HIGHWAY PATROL OFFICER.

3 Q. IS IT FAIR TO SAY YOU'VE TESTIFIED BEFORE?

4 A. SEVERAL TIMES.

5 Q. DID YOU TRAIN WITH MS. NEWTON DURING THE SIX -- FIRST SIX
6 WEEKS THAT YOU WERE IN THE NEW HIRE CLASS?

7 A. YES.

8 Q. WHO WAS THAT UNDER?

9 A. JEFF ANDRE.

10 Q. AFTER YOUR TRAINING WITH JEFF ANDRE, WHAT DEPARTMENT WERE
11 YOU ASSIGNED TO?

12 A. OPERATIONS CENTRAL, OPCEN.

13 Q. WAS THERE A SPECIFIC LOCATION IN OPCEN WHERE YOU WERE
14 ASSIGNED?

15 A. I WAS ASSIGNED IN THE SOUTH SIDE.

16 Q. HOW MANY SIDES ARE THERE?

17 A. THERE'S NORTH AND SOUTH, AND I WAS ON THE SOUTH SIDE.

18 Q. DO YOU KNOW WHERE CIARA NEWTON WAS ASSIGNED IN OPERATION
19 CENTRAL?

20 A. ON THE NORTH SIDE.

21 Q. CAN YOU DESCRIBE BRIEFLY WHAT THE DIFFERENCE BETWEEN THE
22 NORTH AND THE SOUTH SIDE IS, IF THERE IS ANY?

23 A. PHYSICALLY WE ARE IN THE SAME BUILDING AND WE SEE EACH
24 OTHER EVERY DAY.

25 THEY HAVE THREE DESKS THAT ARE ON ONE SIDE OF THE ROOM AND

1 THEN WE HAVE THREE DESKS FOR THE SOUTH SIDE ON THE OTHER SIDE
2 OF THE ROOM.

3 Q. IN TERMS OF THE WORK, IS THERE ANY DIFFERENCE FROM THE
4 NORTH SIDE TO THE SOUTH SIDE?

5 A. I THINK THERE IS.

6 Q. OKAY. WHAT IS THE DIFFERENCE?

7 A. I THINK IT'S A LOT HARDER ON THE SOUTH SIDE.

8 Q. WHY IS THAT?

9 A. IT IS DIRTIER. IT'S A DIFFERENT TYPE OF WORK. DIFFERENT
10 TYPE OF THE REFINING PROCESS.

11 Q. SINCE YOU BROUGHT THAT UP, WE HAVEN'T TALKED MUCH ABOUT
12 THIS YET, BUT WE'VE HEARD THE PHRASE "PROCESS OPERATOR".

13 WHAT DOES THAT MEAN?

14 A. SO AT THE REFINERY, WE BASICALLY TAKE A CRUDE OIL OUT OF
15 THE GROUND AND WE HAVE ONE OF SEVEN STRUCTURES IN THE WORLD
16 WHICH IS WITH THE FLEXICOKER, AND WE ARE ABLE TO HEAT IT UP
17 AND BREAK IT DOWN INTO SMALLER CARBON STRANDS.

18 AND FROM THERE WE ARE ABLE TO MAKE GASOLINE DIESEL, JET
19 FUEL. AND WE ALSO SELL SOME OF THE BYPRODUCTS OUT OF THAT
20 BECAUSE THERE'S A LOT OF SULFUR IN IT. SO THEY HAVE A LOT OF
21 SULFUR PLANTS OUT THERE THAT'S USED FOR -- DIFFERENT COMPANIES
22 WILL BUY THE SULFUR FOR USING IN THEIR LAWN, OTHER DIFFERENT
23 TYPES OF PRODUCTS. THERE'S A LOT OF BYPRODUCTS THAT ARE ALSO
24 SOLD.

25 Q. WHAT ABOUT THE WORK ITSELF? HAVE YOU WORKED ON THE NORTH

1 SIDE AS WELL?

2 **A.** NO.

3 **Q.** BUT THE WORK AS A PROCESS OPERATOR ITSELF, HOW WOULD YOU
4 DESCRIBE THAT JUST BRIEFLY?

5 WHAT DO YOU DO DURING THESE SHIFTS THAT WE'VE HEARD ABOUT?

6 **A.** SO WE HAVE 12-HOUR SHIFTS. WE ARE EITHER WORKING DAY OR
7 NIGHTS. WE START -- THE OFFICIAL START TIME IS 6:00 O'CLOCK.
8 SO EITHER 6:00 IN THE MORNING OR 6:00 AT NIGHT FOR 12 HOURS.

9 WE ARE RESPONSIBLE FOR A SPECIFIC UNIT. THERE'S THREE ON
10 THE NORTH, THERE'S THREE ON THE SOUTH. AND IN THAT UNIT, WE
11 START WITH TAKING READINGS, SAMPLES OF THE UNIT THAT WE ARE
12 ASSIGNED TO, AND BASICALLY MONITORING THAT UNIT, WORKING
13 CLOSELY WITH A BOARD OPERATOR WHO WILL HAVE US OPEN/CLOSE
14 VALVES OR MAKE CHANGES ON TEMPERATURES OR VOLUMES OF DIFFERENT
15 VESSELS.

16 **Q.** BEFORE YOU GOT THE JOB AT THE REFINERY, YOU DIDN'T HAVE
17 ANY EXPERIENCE IN THE INDUSTRY, DID YOU?

18 **A.** NOTHING.

19 **Q.** SO YOU LEARNED EVERYTHING FROM SHELL THERE, RIGHT?

20 **A.** YES.

21 **Q.** OKAY.

22 DID YOU EVER WORK DIRECTLY WITH CIARA NEWTON AFTER THAT
23 FIRST SIX WEEKS OF TRAINING WITH MR. ANDRE?

24 **A.** I WORKED WITH HER ON SHIFT BUT NOT DIRECTLY AS FAR AS IN
25 THE SAME UNIT THAT SHE WORKED. WE WORKED TWO DIFFERENT UNITS.

1 Q. CAN YOU EXPLAIN THAT?

2 A. THERE'S THREE UNITS ON THE SOUTH SIDE, THREE UNITS ON THE
3 NORTH SIDE. SHE WAS ASSIGNED TO ONE OF THE NORTH SIDE UNITS,
4 WHICH WAS HP-2. I WAS ASSIGNED TO ONE OF THE SOUTH SIDE
5 UNITS. AND WE WORKED THE EXACT SAME SCHEDULE SO WE HAD THE
6 SAME DAYS OFF AND WE WORKED THE SAME NIGHTS OR DAYS TOGETHER.

7 Q. OKAY.

8 AT SOME POINT DID YOU HAVE RICHARD METCALF AS A
9 SUPERVISOR?

10 A. YES.

11 Q. AT THAT TIME YOU HAD MR. METCALF AS A SUPERVISOR, DO YOU
12 KNOW WHETHER CIARA ALSO HAD HIM AS HER SUPERVISOR?

13 A. I BELIEVE SHE DID.

14 Q. DID MR. METCALF -- WHEN DID YOU JOIN MR. METCALF'S TEAM?

15 A. HE BECAME OUR FOREMAN PROBABLY IN AUGUST, SEPTEMBER TIME
16 FRAME.

17 Q. OF 2016?

18 A. OF '16, YES.

19 Q. WHEN HE BECAME YOUR FOREMAN, DID HE SAY ANYTHING TO YOUR
20 TEAM ABOUT YOU GUYS ALL HAVING A BLANK SLATE OR A CLEAN SLATE,
21 ANYTHING LIKE THAT?

22 A. I RECALL THAT, YES.

23 Q. DO YOU RECALL SPECIFICALLY WHAT HE SAID?

24 A. I BELIEVE HE USED THOSE WORDS, A CLEAN SLATE. BASICALLY
25 HE WAS A NEW FOREMAN, AND MOST OF THE PEOPLE HAD BEEN WORKING

1 THERE FOR SEVERAL YEARS.

2 CIARA AND I HAD ONLY BEEN THERE FOR, AT THAT POINT, NOT
3 EVEN A YEAR. AND MOST EVERYBODY ELSE HAD BEEN THERE FOR
4 SEVERAL YEARS. AND FOR HIM TO COME IN AND ALMOST AS IF IT
5 WAS -- I'VE HEARD RUMORS OR WHATEVER ABOUT HOW PEOPLE WORK OR
6 WHATEVER, BUT EVERYTHING IS A CLEAN SLATE. IT WAS TO THAT
7 EFFECT.

8 Q. AT THAT TIME HAD YOU QUALIFIED AS AN OPERATOR YET?

9 A. I HAD.

10 Q. DO YOU KNOW WHEN YOU QUALIFIED FOR YOUR FIRST JOB?

11 A. THE -- IT'S A LITTLE COMPLICATED.

12 THE UNIT I WORKED HAS TWO SMALLER JOBS INSIDE OF IT. SO
13 THE FIRST JOB, WHICH WAS DSU, WHICH MAKES DIESEL AND JET FUEL,
14 THAT I QUALIFIED IN MAY. AND THEN WE HAD A TURNAROUND
15 SCHEDULE BECAUSE THEY WERE DOING -- WHICH IS JUST MAINTENANCE
16 FOR TWO MONTHS. SO THE SECOND PART HAD TO WAIT UNTIL
17 AFTERWARDS. AND I THINK I FINISHED WITH THE SECOND PART OF
18 THAT MAYBE AUGUST OR SEPTEMBER.

19 Q. OKAY. THAT'S THE FIRST TIME WE'VE HEARD THE WORD
20 "TURNAROUND". CAN YOU BRIEFLY DESCRIBE WHAT THAT IS?

21 A. FOR US IT'S A MASSIVE -- EVERYTHING PRETTY MUCH SHUTS DOWN
22 AND IT IS A MASSIVE MAINTENANCE SCHEDULE WHERE I THINK WE HAVE
23 ABOUT 1500 TO 2,000 CONTRACTORS COMES OUT AND WE FIX VALVES,
24 EXCHANGERS. THEY DO A LOT OF MAINTENANCE WORK. AND
25 EVERYTHING HAS TO BE SHUT DOWN FOR THAT TIME FRAME.

1 AND DURING THAT TIME FRAME, OUR SCHEDULE CHANGES TO WHERE
2 WE ARE NOT ON THE ROTATING SCHEDULE OF NIGHTS AND DAYS. YOU
3 EITHER WORK NIGHTS OR YOU WORK DAYS, AND IT'S USUALLY SIX DAYS
4 ON, ONE DAY OFF DURING THAT TWO-MONTH PERIOD.

5 **Q.** HOW OFTEN DOES TURNAROUND HAPPEN?

6 **A.** FOR OUR UNIT IT'S EVERY THREE TO FOUR YEARS.

7 **Q.** IT JUST SO HAPPENED IT WAS IN 2016 THE SAME YEAR THAT YOU
8 STARTED?

9 **A.** RIGHT. IT WAS GREAT.

10 **Q.** YOU SEEM HAPPY ABOUT THAT.

11 OKAY. DID YOU EVER HAVE CAMERON CURRAN AS A SUPERVISOR?

12 **A.** YES.

13 **Q.** DID YOU EVER FEEL LIKE HE MICROMANAGED YOU?

14 **A.** NO.

15 **Q.** HAD YOU EVER HEAR (SIC) ANY FEEDBACK THAT THAT WAS THE
16 TYPE OF MANAGER THAT HE WAS?

17 **MR. LAFAYETTE:** OBJECTION, HEARSAY.

18 **THE COURT:** SUSTAINED.

19 **BY MS. NUGENT:**

20 **Q.** HOW WOULD YOU DESCRIBE HIS SUPERVISORY STYLE?

21 **A.** VERY POLICY ORIENTED.

22 **Q.** DID YOU EXPERIENCE THAT FROM HIM YOURSELF?

23 **A.** EXPERIENCE IN WHAT WAY?

24 **Q.** DID YOU THINK THAT HE WAS VERY POLICY ORIENTED WHEN YOU
25 WORKED UNDER HIM?

1 **A.** YES.

2 **Q.** DID HE EVER WRITE ANYTHING IN YOUR PD LOG?

3 **A.** NOT THAT I RECALL.

4 **Q.** LET'S SWITCH TOPICS AND TALK ABOUT THE STICKER. WE HAVE
5 HEARD A LOT ABOUT IT TODAY.

6 AT SOME POINT DID YOU FIND OUT THAT THERE HAD BEEN A
7 STICKER LEFT IN THE OFFICE THAT YOU DESCRIBED FOR US EARLIER
8 AND SPECIFICALLY ON MS. NEWTON'S DESK?

9 **A.** YES.

10 **Q.** HOW DID YOU FIND OUT ABOUT THAT?

11 **A.** SO EVERY SHIFT, WHETHER IT'S 7:00 P.M. OR 7:00 A.M., WE
12 HAVE A SAFETY MEETING. AND I DON'T RECALL, I THINK -- I DON'T
13 RECALL IF IT WAS MORNING OR NIGHT, BUT AFTER THAT 7:00 O'CLOCK
14 SAFETY MEETING, CIARA APPROACHED ME AND ASKED ME IF I HAD LEFT
15 A STICKER ON HER DESK. I TOLD HER, NO, I DIDN'T. AND THEN
16 SHE SHOWED ME THE STICKER WHICH --

17 **Q.** WHAT WAS YOUR REACTION WHEN YOU SAW IT?

18 **A.** I WAS SURPRISED. IT WAS VERY INAPPROPRIATE.

19 **Q.** WAS THERE ANY OTHER REASON THAT YOU WERE SURPRISED OTHER
20 THAN IT BEING INAPPROPRIATE?

21 **A.** YOU ALREADY KNOW WHAT WAS ON THE STICKER?

22 **Q.** YES. WE'VE SEEN IT.

23 **A.** OKAY. OKAY.

24 **Q.** DID YOU FIND IT OFFENSIVE?

25 **A.** YEAH, IT WAS OFFENSIVE. I THOUGHT OF IT -- OF COURSE

1 COMING FROM CIARA, I THOUGHT OF IT AS BEING SEXUAL HARASSMENT.

2 Q. DID YOU TELL HER THAT YOU FOUND IT OFFENSIVE?

3 A. OH, YEAH.

4 Q. DID YOU GIVE HER ANY ADVICE ABOUT WHAT TO DO WITH IT?

5 A. I TOLD HER TO TAKE A PICTURE OF IT, AND THEN, YOU KNOW, TO
6 CONTACT THE SUPERVISORS, LET THEM KNOW ABOUT IT.

7 Q. DID YOU --

8 A. LIKE IF SHE WANTED TO. IT WASN'T LIKE I WAS TELLING HER
9 WHAT TO DO, BUT IT WAS KIND OF UP TO HER AS FAR AS A
10 SUGGESTION.

11 Q. DID YOU HAVE ANY EXPECTATION BECAUSE OF YOUR LAW
12 ENFORCEMENT BACKGROUND ABOUT WHAT SHELL MAY DO ABOUT THAT?

13 MR. LAFAYETTE: OBJECTION, IMPROPER OPINION,
14 RELEVANCY.

15 THE COURT: IT LACKS FOUNDATION. SUSTAINED.

16 BY MS. NUGENT:

17 Q. DID YOU HAVE -- YOU SAID THAT YOU SAID TAKE A PICTURE OF
18 IT AND TALK TO HER SUPERVISOR, RIGHT?

19 A. YES.

20 Q. WHY DID YOU TELL HER TO DO THAT?

21 A. TO TAKE A PICTURE --

22 MR. LAFAYETTE: OBJECTION, RELEVANCE, YOUR HONOR.

23 THE COURT: OVERRULED.

24 THE WITNESS: TO TAKE A PICTURE SO THAT SHE WOULD
25 ALWAYS HAVE THAT IN CASE SOMETHING HAPPENED TO IT, IT

1 DISAPPEARED, OR SOMETHING LIKE THAT. IF SHE WAS GOING TO GO
2 FORWARD AND GIVE THAT TO SOMEBODY AS FAR AS A SUPERVISOR AND
3 SAY THAT SHE HAS A PROBLEM WITH THIS, IT'S POSSIBLE THINGS GET
4 LOST. SO AS LONG AS SHE HAD THE PICTURE OF IT IT WOULDN'T
5 DISAPPEAR.

6 **BY MS. NUGENT:**

7 **Q.** DID ANYBODY ASK YOU WHETHER YOU HAD BROUGHT THE STICKER TO
8 WORK?

9 **A.** THEY DID NOT.

10 **Q.** WAS -- MR. METCALF WAS YOUR TEAM -- YOUR SHIFT LEADER AT
11 THE TIME, RIGHT?

12 **A.** THAT I'M NOT POSITIVE. I DON'T KNOW -- I'M NOT SURE IF IT
13 WAS UNDER -- WHAT TIME FRAME IT WAS.

14 **Q.** NO MATTER WHAT TIME FRAME IT WAS, DO YOU RECALL WHOEVER
15 YOUR SHIFT LEADER WAS AT THAT TIME ADDRESSING YOU INDIVIDUALLY
16 OR YOUR TEAM AS A GROUP ABOUT THE STICKER?

17 **A.** SO I RECALL AS A GROUP, AND I DON'T REMEMBER IF IT WAS THE
18 STL OR WHICH PERSON, WHICH AUTHORITATIVE PERSON IT WAS THAT
19 TOLD US TO NOT PUT OUR THOSE STICKERS ON OUR HARD HAT.

20 **Q.** DID YOU SEE THE STICKER ON ANYONE'S HARD HAT?

21 **A.** NO.

22 **Q.** DID YOU -- YOU EVER SAW IT ON JONATHAN BOYLE'S HARD HAT?

23 **A.** NO.

24 **Q.** WHEN THE SHIFT TEAM LEADER TOLD YOU NOT TO PUT IT ON THE
25 HARD HAT, DID YOU GET THE IMPRESSION THAT SOME OF THE

1 OPERATORS HAD HAD IT ON THEIR HARD HATS?

2 **A.** OR HAD POSSESSION OF IT.

3 **Q.** IT WAS A HARD HAT STICKER, RIGHT?

4 **A.** YES.

5 SO WITH SHELL, THERE'S A LOT OF STICKERS THAT PEOPLE PUT
6 ON THEIR HARD HATS, WHETHER IT'S LIKE A MONSTER ENERGY DRINK
7 STICKER -- I HAVE A VANS STICKER ON MY HARD HAT. THERE'S ALSO
8 OTHER STICKERS THAT COME OUT DURING TURNAROUNDS, SAFETY
9 STICKERS PRODUCED BY THE COMPANY, THINGS TO, YOU KNOW, FOCUS
10 ON SAFETY-TYPE STICKERS.

11 SO THERE'S PEOPLE THAT HAVE A LOT OF DIFFERENT STICKERS,
12 INCLUDING MYSELF, ON THEIR HARD HATS.

13 **Q.** DID YOU EVER TELL MS. NEWTON THAT YOU SAW JONATHAN BOYLE
14 WITH THE STICKER ON HIS HARD HAT?

15 **A.** NO, I DON'T RECALL THAT.

16 **Q.** AND IT DOESN'T SOUND LIKE YOU WERE EVER ASKED BY YOUR
17 SHIFT TEAM LEADER IF YOU KNEW WHO BROUGHT WHERE THE STICKER
18 IN; IS THAT TRUE?

19 **A.** THAT'S TRUE.

20 **Q.** HOW DID YOU LEARN THAT MS. NEWTON HAD BEEN FIRED?

21 **MR. LAFAYETTE:** OBJECTION, RELEVANCE, YOUR HONOR.

22 **THE COURT:** SUSTAINED.

23 **BY MS. NUGENT:**

24 **Q.** AT SOME POINT DID YOU LEARN THAT MS. NEWTON HAD BEEN
25 FIRED?

1 **A.** YES.

2 **Q.** WHAT WAS YOUR REACTION WHEN YOU HEARD THAT?

3 **MR. LAFAYETTE:** OBJECTION, RELEVANCE, YOUR HONOR.

4 **THE COURT:** SUSTAINED.

5 **BY MS. NUGENT:**

6 **Q.** DID MR. METCALF ADDRESS YOUR TEAM ABOUT THAT?

7 **A.** YES.

8 **Q.** ABOUT HER FIRING?

9 WHAT DID HE TELL YOU?

10 **A.** IT WAS DURING OUR 7:00 O'CLOCK MEETING, AND HE FELT A
11 LITTLE RESPONSIBLE FOR IT AS IF IT WAS -- HE WISHED HE HAD
12 MORE TIME TO HELP HER IS WHAT I RECALL HIM MENTIONING IN THE
13 MEETING.

14 **Q.** WHAT DID HE SAY THAT LED YOU TO THINK THAT?

15 **A.** EXACTLY, I DON'T RECALL EXACTLY. BUT TO THAT EFFECT THAT
16 HE FELT PARTIALLY RESPONSIBLE.

17 **Q.** DID ANY OF THE OPERATORS ON YOUR TEAM SAY ANYTHING ABOUT
18 MS. NEWTON WHEN MR. METCALF ADDRESSED YOU ABOUT HER FIRING?

19 **MR. LAFAYETTE:** OBJECTION, RELEVANCY AND HEARSAY.

20 **THE COURT:** SUSTAINED.

21 **BY MS. NUGENT:**

22 **Q.** DID MS. NEWTON'S FIRING CAUSE YOU ANY CONCERN ABOUT YOUR
23 OWN JOB SECURITY THERE?

24 **MR. LAFAYETTE:** OBJECTION, RELEVANCE, AND HEARSAY,
25 AND CHARACTER.

1 **THE COURT:** SUSTAINED.

2 **BY MS. NUGENT:**

3 **Q.** YOU WERE CONCERNED AFTER SHE WAS FIRED THAT MAYBE YOU WERE
4 DOING THE SAME THING SHE WAS --

5 **MR. LAFAYETTE:** OBJECTION --

6 **THE COURT:** HOW IS THIS RELEVANT?

7 SUSTAINED.

8 **BY MS. NUGENT:**

9 **Q.** FROM WHAT YOU OBSERVED OF MS. NEWTON'S WORK, WERE YOU
10 SURPRISED THAT SHE WAS FIRED?

11 **MR. LAFAYETTE:** OBJECTION, RELEVANCY, FOUNDATION.

12 **THE COURT:** LACKS FOUNDATION. HE'S NOT IN THE SAME
13 GROUP HE SAID.

14 **BY MS. NUGENT:**

15 **Q.** DID YOU EVER OBSERVE MS. NEWTON'S WORK?

16 **A.** NO.

17 **Q.** DID YOU EVER OBSERVE HER ASKING QUESTIONS TO THE SHIFT
18 TEAM LEADERS OR OTHER OPERATORS?

19 **A.** NO.

20 **Q.** THERE'S A -- THERE SHOULD BE A WITNESS BINDER IN FRONT OF
21 YOU. THERE'S ONLY ONE EXHIBIT IN IT.

22 **A.** I DON'T HAVE IT.

23 **MS. NUGENT:** MS. STONE?

24 **THE COURT:** THEY GAVE ME --

25 **MS. NUGENT:** I THINK I HANDED YOU TWO.

1 **THE CLERK:** WHICH ONE IS HIS?

2 **MS. NUGENT:** OH. IT DOESN'T MATTER. THERE'S ONLY
3 ONE EXHIBIT IN THERE.

4 (BINDER HANDED TO WITNESS.)

5 **THE WITNESS:** THANK YOU.

6 **MS. NUGENT:** THIS IS EXHIBIT 92. IT IS THE ONLY ONE
7 IN THERE.

8 **BY MS. NUGENT:**

9 **Q.** IF YOU LOOK AT THE PAGE THAT HAS BEEN MARKED AT THE BOTTOM
10 WITH A NUMBER, IT'S 1391.

11 **A.** WITH THE WORD "SOMETHING" AT THE TOP?

12 **Q.** YES.

13 **A.** YES.

14 **Q.** IS THAT A PART OF A TEXT EXCHANGE THAT YOU EXCHANGED WITH
15 MS. NEWTON ON THE DAY SHE WAS FIRED, SEPTEMBER 28TH?

16 **A.** YES.

17 **Q.** DOES THAT REFRESH YOUR RECOLLECTION THAT YOU --

18 **MR. LAFAYETTE:** OBJECTION, YOUR HONOR.

19 **THE COURT:** WHAT'S THE OBJECTION?

20 **MR. LAFAYETTE:** IT'S ONE, NOT RELEVANT BASED ON THE
21 DATE ABOVE. IT'S IMPROPER OPINION. IT'S LACKING FOUNDATION.

22 **THE COURT:** WELL, I THOUGHT THE STIPULATION WAS THAT
23 THE FIRING DATE WAS SEPTEMBER 29TH. THIS SAYS SEPTEMBER 28TH.

24 **MS. NUGENT:** THAT'S RIGHT. I ACTUALLY THINK THE
25 FIRING DATE WAS THE 28TH AND THE STIPULATION WAS ANYTHING

1 AFTER THE TERMINATION DATE. THIS WAS ON THE TERMINATION DATE.

2 THE COURT: LAY SOME FOUNDATION. I DON'T KNOW WHAT
3 THIS IS.

4 MS. NUGENT: OKAY.

5 BY MS. NUGENT:

6 Q. WHEN YOU FOUND OUT THAT MS. NEWTON HAD BEEN FIRED, DID YOU
7 CONTACT HER?

8 A. EITHER I CONTACTED HER OR SHE CONTACTED ME.

9 Q. WHAT WAS THE METHOD OF COMMUNICATION?

10 A. TEXTING.

11 Q. IS WHAT HAS BEEN CAPTURED IN EXHIBIT 92 BEGINNING ON
12 PAGE 1388 AT THE BOTTOM, THE TEXTS THAT YOU EXCHANGED WITH
13 MS. NEWTON ON SEPTEMBER 28TH GOING UP TO PAGE 1393?

14 A. YES, IT APPEARS SO.

15 Q. HAVE YOU HAD A CHANCE TO READ WHAT IS ON PAGE 1391, THE
16 ONE THAT BEGINS WITH THE "SOMETHING" AT THE TOP?

17 A. YES.

18 Q. YOU ASKED RICHARD METCALF WHEN HE ADDRESSED YOUR TEAM --
19 THAT WAS THE TEAM SHE WAS ON WHEN SHE WAS FIRED, RIGHT?

20 A. CORRECT.

21 Q. MR. METCALF TOLD EVERYBODY ON THE TEAM SHE HAD BEEN FIRED,
22 RIGHT?

23 A. YES.

24 Q. DID HE GIVE A REASON?

25 A. MAY I REVIEW THESE REAL QUICK?

1 Q. OF COURSE YOU CAN. YES.

2 A. OKAY.

3 Q. DID MR. METCALF GIVE A REASON FOR HER TERMINATION?

4 A. IT WAS JUST SIMPLE, FROM WHAT I HAD HERE, THAT SHE DID NOT
5 MAKE IT OFF PROBATION.

6 Q. WHEN MR. METCALF TOLD THE TEAM THAT, DOES THIS REFRESH
7 YOUR RECOLLECTION THAT YOU -- YOU WANTED TO KNOW --

8 MR. LAFAYETTE: OBJECTION, YOUR HONOR --

9 MS. NUGENT: -- IN CASE YOU WERE DOING THE SAME
10 THING.

11 MR. LAFAYETTE: OBJECTION, YOUR HONOR.

12 MS. NUGENT: -- THAT SHE WAS?

13 MR. LAFAYETTE: IT IS AN ATTEMPT TO GET INFORMATION
14 THAT --

15 THE COURT: WHAT'S THE LEGAL OBJECTION,
16 MR. LAFAYETTE?

17 MR. LAFAYETTE: LEGAL OBJECTION IS IT CALLS FOR
18 HEARSAY TESTIMONY, IMPROPER OPINION ABOUT WHAT HIS BELIEF
19 WAS --

20 THE COURT: SUSTAINED.

21 MR. LAFAYETTE: -- AS TO HIM.

22 BY MS. NUGENT:

23 Q. YOU WERE ONE OF THE MALE OPERATORS WHO WAS WORKING ON THE
24 SAME TEAM AS MS. NEWTON, WEREN'T YOU?

25 A. YES.

1 Q. AFTER SHE WAS FIRED, YOU HAD CONCERNS THAT MAYBE YOU WERE
2 DOING THE SAME THING SHE WAS --

3 MR. LAFAYETTE: OBJECTION, YOUR HONOR.

4 THE COURT: SUSTAINED.

5 BY MS. NUGENT:

6 Q. IF YOU WILL LOOK BACK TO WHAT'S -- THE NUMBER ON THE
7 BOTTOM IS 1389.

8 THIS IS STILL PART OF THAT SAME TEXT EXCHANGE WITH HER,
9 RIGHT?

10 A. YES.

11 Q. AND I ASKED YOU EARLIER ABOUT YOUR OBSERVATIONS OF
12 MS. NEWTON'S WORK.

13 AND IF YOU WILL READ TO YOURSELF THE BOTTOM TEXT HERE
14 BEGINNING WITH "JOHN HESS", AND THEN I WILL ASK YOU A
15 QUESTION.

16 A. YES.

17 Q. AT THE TIME THAT MS. NEWTON WAS FIRED, WAS IT YOUR OPINION
18 BASED ON YOUR PERCEPTION THAT SHE WAS ASKING QUESTIONS IN THE
19 WORKPLACE AND DOING JUST FINE?

20 MR. LAFAYETTE: OBJECTION, YOUR HONOR. LACKING
21 FOUNDATION, CONSTITUTES INADMISSIBLE HEARSAY.

22 THE COURT: SUSTAINED.

23 BY MS. NUGENT:

24 Q. WAS IT YOUR PERCEPTION THAT THERE WAS NO REASON FOR HER
25 FIRING?

1 **MR. LAFAYETTE:** OBJECTION, RELEVANCY, IMPROPER
2 OPINION, LACKING FOUNDATION.

3 **THE COURT:** SUSTAINED.

4 **MS. NUGENT:** OKAY. I HAVE NOTHING FURTHER.
5 THANK YOU, MR. WESSELMAN.

6 **THE WITNESS:** YES, MA'AM.

7 **THE COURT:** CROSS.

8 **CROSS-EXAMINATION**

9 **BY MR. LAFAYETTE:**

10 **Q.** GOOD MORNING (SIC).

11 **A.** GOOD AFTERNOON.

12 **Q.** I KEEP DOING THAT. OKAY.

13 WHEN YOU WERE ON PROBATION FROM JANUARY UNTIL SEPTEMBER,
14 WERE YOU TARDY?

15 **A.** NOT THAT I RECALL.

16 **Q.** DID YOU GO ADVISE YOUR -- AFTER THAT STICKER WAS FOUND ON
17 AUGUST 29, DID YOU SEE ANY MORE OF THEM IN THE WORKPLACE?

18 **A.** I DID NOT.

19 **Q.** PRIOR TO AUGUST 29, HAD YOU SEEN A STICKER LIKE THAT
20 BEFORE?

21 **A.** NO, SIR.

22 **MR. LAFAYETTE:** YOUR HONOR, I WILL RESERVE EVERYTHING
23 ELSE FOR THIS WITNESS UNTIL I CALL MY CASE-IN-CHIEF.

24 **THE COURT:** IS HE ON YOUR --

25 **MR. LAFAYETTE:** YES.

1 **THE COURT:** HAS HE BEEN SUBPOENAED?

2 **MR. LAFAYETTE:** YES.

3 **THE COURT:** ALL RIGHT THEN.

4 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

5 **THE COURT:** ANYTHING ON THOSE TWO QUESTIONS?

6 **MS. NUGENT:** NO. THANK YOU.

7 **THE COURT:** ALL RIGHT. WE WILL SEE YOU LATER.

8 **THE WITNESS:** YES, MA'AM.

9 **THE COURT:** YOU MAY STEP DOWN.

10 **THE WITNESS:** THANK YOU.

11 **THE COURT:** NEXT WITNESS.

12 **MS. NUGENT:** THE PLAINTIFF CALLS ODEMENA EKELEMU.

13 (PAUSE IN THE PROCEEDINGS.)

14 **(ODEMENA EKELEMU, CALLED AS A WITNESS FOR THE PLAINTIFF,**
15 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)**

16 **THE WITNESS:** I DO.

17 **THE CLERK:** OKAY. PLEASE BE SEATED. THEN I'LL HAVE
18 YOU SCOOT UP AND YOU CAN ADJUST THAT MIC. AND WE ARE GOING TO
19 HAVE YOU STATE YOUR FULL NAME AND SPELL YOUR FIRST AND LAST
20 NAME. SO FIRST STATE YOUR FULL NAME.

21 **THE WITNESS:** NAME IS ODEMENA EKELEMU. SPELLED
22 O-D-E-M-E-N-A. LAST NAME IS E-K-E-L-E-M-U.

23 **THE COURT:** GOOD AFTERNOON, SIR.

24 **THE WITNESS:** THANK YOU.

25 **THE COURT:** YOU MAY PROCEED.

DIRECT EXAMINATION

BY MS. NUGENT:

Q. THANK YOU. GOOD AFTERNOON.

A. GOOD AFTERNOON.

Q. MR. EKELEMU, DID YOU RECEIVE A SUBPOENA TO TESTIFY IN THIS CASE?

A. YES, I DID.

Q. WHERE DO YOU WORK NOW?

A. I WORK AT SHELL.

Q. WHERE DO YOU WORK AT SHELL?

A. OPCEN DEPARTMENT AT SHELL.

Q. IS THAT AT THE REFINERY IN MARTINEZ?

A. YES.

Q. WHEN DID YOU START THERE?

A. SO ORIGINALLY I STARTED AT SHELL IN JANUARY 2016. THEN I TOOK SOME TIME OFF IN APRIL OF THIS YEAR. AND I JUST RETURNED A FEW WEEKS AGO.

Q. WHEN YOU STARTED IN JANUARY OF 2016 WAS CIARA NEWTON IN YOUR NEW HIRE CLASS?

A. YES, SHE WAS.

Q. DID YOU KNOW HER BEFORE THAT?

A. NO.

Q. LET'S TAKE A LOOK AT THAT NEW HIRE CLASS.

YOU HAVE A BINDER IN FRONT OF YOU. AND THERE IS AN EXHIBIT NO. 145.

1 **A.** OKAY.

2 **Q.** ARE YOU THERE?

3 **A.** YES.

4 **Q.** WHAT IS THAT?

5 **A.** THAT'S A PICTURE OF EVERYONE IN THE CLASS PLUS THE
6 TRAINER.

7 **Q.** WHO WAS THE TRAINER?

8 **A.** THAT WOULD BE JEFF ANDRE ON THE LEFT.

9 **Q.** YOU SAID IT'S EVERYBODY IN THE CLASS?

10 **A.** I BELIEVE IT WAS, YES. THERE SHOULD BE MAYBE 21 OR 22.

11 **MS. NUGENT:** YOUR HONOR, I WOULD LIKE TO OFFER
12 EXHIBIT 145 INTO EVIDENCE.

13 **THE COURT:** ANY OBJECTION?

14 **MR. LAFAYETTE:** NO, YOUR HONOR.

15 **THE COURT:** IT IS ADMITTED.

16 (PLAINTIFF'S EXHIBIT 145 RECEIVED IN EVIDENCE)

17 **BY MS. NUGENT:**

18 **Q.** LET'S TAKE A LOOK AT IT. IT WILL POP UP HERE ON THE
19 SCREEN.

20 **THE CLERK:** IT WILL TAKE A SECOND.

21 (DISPLAYED ON SCREEN.)

22 **BY MS. NUGENT:**

23 **Q.** OKAY. IN THIS PHOTO, ARE YOU IN THE BACK THERE IN THE
24 BLUE SWEATER?

25 **A.** YEAH, THAT WAS ME.

1 Q. AND WE JUST SAW MR. WESSELMAN, IS THAT HIM RIGHT THERE
2 (INDICATING)?

3 A. YES.

4 Q. AND HOW ABOUT CIARA NEWTON, RIGHT THERE (INDICATING)?

5 A. YES.

6 Q. IS THIS PATRICK NEUMAN (INDICATING)?

7 A. YES.

8 Q. AND IS THIS JOSE NAVARRO (INDICATING)?

9 A. CORRECT.

10 Q. AND YOU MENTIONED THE TRAINER. THAT'S JEFF ANDRE, RIGHT
11 (INDICATING)?

12 A. YES.

13 Q. YOU SAID THERE ARE ABOUT 22 PEOPLE IN THE PROBATIONARY
14 CLASS; IS THAT CORRECT?

15 A. 21, 22, I DON'T REMEMBER EXACTLY.

16 Q. DO YOU KNOW WHEN IN THE TRAINING THIS PHOTO WAS TAKEN,
17 WHEN IN THE NINE MONTHS THAT YOU WERE ALL THE NEW HIRE CLASS?

18 A. I THINK THAT CLASS WAS MAYBE TWO OR THREE MONTHS, I THINK.
19 THIS WAS TAKEN AT THE END OF THE CLASS, I THINK. I'M NOT SURE
20 IF IT WAS AFTER EVERYBODY PASSED BUT I KNOW IT WAS AT THE END
21 OF THE CLASS.

22 Q. AND WHEN YOU SAY EVERYBODY PASSED, ARE YOU TALKING ABOUT A
23 CERTAIN PORTION OF THE TRAINING OR ARE YOU TALKING ABOUT
24 PROBATION AS A WHOLE?

25 A. NOT PROBATION. SO THIS WOULD BE, PASSING WOULD BE IF YOU

1 QUALIFIED TO GO JOIN A UNIT.

2 Q. OKAY.

3 A. THERE WAS A CHANCE THAT YOU MAY NOT PASS THE INITIAL
4 TRAINING, IN WHICH CASE YOU ARE NOT ALLOWED TO JOIN A UNIT.

5 Q. BUT EVERYBODY PASSED THE INITIAL TRAINING, RIGHT?

6 A. YES.

7 Q. DO YOU KNOW IF ANYONE OTHER THAN CIARA NEWTON IN THIS
8 PICTURE DID NOT PASS PROBATION?

9 A. I THINK EVERYBODY PASSED AND SENT TO A UNIT.

10 ARE YOU TALKING ABOUT PROBATION?

11 Q. PROBATION, YES.

12 A. SO THE PROBATION PERIOD EXTENDED BEYOND THE INITIAL
13 TRAINING AND IT COUNTED AFTER WE GOT ON SHIFT. I THINK IT'S
14 ABOUT NINE MONTHS.

15 I BELIEVE EVERYBODY PASSED. I WASN'T AWARE OF ANYBODY NOT
16 MAKING PROBATION.

17 Q. WELL, YOU KNOW THAT CIARA NEWTON WAS FIRED, RIGHT?

18 A. YES.

19 Q. DO YOU KNOW WHEN SHE WAS FIRED?

20 A. IT WAS RIGHT AT THE END -- I THINK IT WAS RIGHT BEFORE THE
21 END OF THE PROBATION PERIOD.

22 Q. DID -- I THINK THAT YOU CAN USE THE SCREEN, TOO.

23 CAN YOU IDENTIFY SHEILA BABOT?

24 A. SHE IS THE ONE IN THE BLACK JACKET.

25 Q. DO YOU KNOW WHETHER SHE STILL WORKS AT SHELL?

1 **A.** I BELIEVE SHE WAS ALSO FIRED.

2 **Q.** DO YOU KNOW WHEN?

3 **A.** I THINK IT HAPPENED AFTER CIARA'S CASE. I'M NOT SURE
4 EXACTLY.

5 **MS. NUGENT:** WE CAN TAKE THAT DOWN.

6 **BY MS. NUGENT:**

7 **Q.** IS SHELL THE FIRST PETROLEUM COMPANY YOU'VE WORKED FOR?

8 **A.** NO.

9 **Q.** WHAT OTHER OIL PRODUCTS COMPANIES HAVE YOU WORKED FOR?

10 **A.** I'VE WORKED FOR BP.

11 **Q.** WHERE DID YOU WORK FOR BP?

12 **A.** THAT WOULD BE A TOWN CALLED WHITING, INDIANA.

13 **Q.** WHEN WAS THAT?

14 **A.** BETWEEN 2007 AND 2015.

15 **Q.** WHAT DID YOU DO FOR BP?

16 **A.** SAME JOB THAT I'M DOING NOW, OPERATOR.

17 **Q.** OTHER THAN BP AND SHELL, HAVE YOU WORKED FOR ANY OTHER
18 PETROLEUM COMPANIES?

19 **A.** IN BETWEEN TIME I TRIED TO SWITCH JOBS FROM BP TO EXXON
20 MOBILE.

21 **Q.** DID YOU WORK FOR EXXON?

22 **A.** YEAH, BUT I DIDN'T GO THROUGH THE TRAINING. I WENT BACK
23 TO BP FOR PERSONAL REASONS.

24 **Q.** SO WHEN YOU JOINED SHELL IN 2016, IT SOUNDS LIKE YOU HAD
25 ALREADY ABOUT EIGHT YEARS OF EXPERIENCE --

1 **A.** YES.

2 **Q.** -- OR SO IN THE INDUSTRY?

3 **A.** YES.

4 **Q.** EVEN THOUGH YOU HAD THAT EXPERIENCE, WE JUST SAW FROM THE
5 PICTURE YOU STILL WENT THROUGH THE CLASSROOM TRAINING PORTION,
6 RIGHT?

7 **A.** YES.

8 **Q.** YOU STILL HAD TO QUALIFY AS AN OPERATOR --

9 **A.** YES.

10 **Q.** -- ON THE UNIT?

11 AFTER THE CLASSROOM TRAINING YOU TALKED ABOUT YOU WERE
12 ASSIGNED TO OPERATION CENTRAL, RIGHT?

13 **A.** CORRECT.

14 **Q.** AND THAT'S STILL THE DEPARTMENT YOU'RE IN TODAY?

15 **A.** YES.

16 **Q.** DID YOU GET TO CHOOSE YOUR ASSIGNMENT TO OPERATION
17 CENTRAL?

18 **A.** SO THEY MADE US CHOOSE -- MAKE THREE CHOICES. YOU'RE
19 SUPPOSED TO HAVE THREE CHOICES OF WHERE YOU WOULD LIKE TO GO.
20 BUT THEN IT DIDN'T TRULY MATTER. IT WAS UP TO THE DECIDERS TO
21 PUT YOU WHERE THEY WANTED TO PUT YOU.

22 **Q.** WHEN YOU SAY THAT YOU HAD THREE CHOICES, DID YOU GET TO
23 RANK DIFFERENT DEPARTMENTS?

24 **A.** YES. YOU ARE SUPPOSED TO PICK ONE THROUGH THREE WHERE
25 WOULD YOU LIKE TO GO.

1 Q. HOW DID YOU KNOW WHAT THE DEPARTMENTS WERE IN ORDER TO
2 RANK THEM?

3 A. SO THEY HAD, I THINK, SOME OPERATION SPECIALISTS, SOME
4 SUPERVISORS, SOME DIFFERENT DEPARTMENTS COME TALK TO US ABOUT
5 DEPARTMENTS, AND WE WERE ALLOWED TO ASK QUESTIONS. WE TOOK A
6 FEW TOURS OF SOME UNITS. AND THEN PEOPLE ALSO HAD LEARNED
7 THINGS FROM PEOPLE THAT'S WHERE THEY WORKED IN THE UNITS TO
8 DECIDE WHERE TO GO TO.

9 Q. DO YOU RECALL ANYTHING THAT ANYBODY FROM OPERATION CENTRAL
10 SAID TO THE NEW OPERATORS BEFORE THE RANKING BEGAN?

11 A. YEAH. SO THE -- WE HAVE, I THINK, EVERYBODY WENT THROUGH
12 THE TRAINING HAD A PRECONCEIVED NOTION OF WHAT TO EXPECT.
13 THERE'S TWO EXTREMES. ON THE ONE HAND YOU HAVE THE BEST
14 DEPARTMENT TO WORK IN; ON THE OTHER HAND YOU HAVE THE WORST
15 DEPARTMENT TO WORK IN.

16 AND I THINK WHAT WE ALL GOT FROM PEOPLE THAT WORK IN THE
17 UNITS THAT LOGISTICS WAS THE BEST PLACE TO BE AND OPCEN ON THE
18 OTHER HAND....

19 Q. ON THE OTHER HAND THE WORST PLACE TO BE?

20 A. YEAH. WE HAD A TOUR WHERE WE MET GUYS THAT USED TO WORK
21 AT OPCEN AND NOW WORK IN LOGISTICS TELL US WHATEVER YOU DO
22 DON'T GO TO OPCEN.

23 Q. DID THEY TELL YOU WHY?

24 A. I THINK IT'S MOSTLY... SO OPCEN HAS A UNIT THAT'S VERY
25 LABOR INTENSIVE, FOR LACK OF A BETTER TERM. SO IT IS MORE

1 DEMANDING PHYSICALLY, I THINK, WAS WHAT PEOPLE SAID BECAUSE IT
2 WAS AN OLDER UNIT, AND PROCESSING THAT UNIT IS VERY... IS VERY
3 HAZARDOUS, SO TO SPEAK. THERE'S HAZARDS EVERYWHERE, BUT I
4 THINK THAT UNIT IS VERY HEAVILY -- IT WASN'T REALLY FRIENDLY,
5 I GUESS.

6 Q. WHEN YOU SAID AN OLDER UNIT, WERE YOU REFERRING TO THE
7 EQUIPMENT --

8 A. YES.

9 Q. OKAY. OKAY.

10 IS THERE ANY OTHER REASON THAT YOU GOT THE IMPRESSION FROM
11 THESE PRESENTATIONS THAT OPCEN WAS NOT A DESIRABLE ASSIGNMENT?

12 MR. LAFAYETTE: OBJECTION, RELEVANCE, YOUR HONOR.

13 THE COURT: OVERRULED.

14 THE WITNESS: IT WASN'T FROM THE PRESENTATION. SO
15 EVERYBODY THAT CAME TO TALK ABOUT THE UNITS WERE VERY HAPPY TO
16 WORK AT THE UNIT THEY WORKED IN.

17 WE HAD THE OPERATION SPECIALIST FROM OPCEN COME TALK WITH
18 US ABOUT OPCEN. GRAYSON CAME TO SPEAK TO US ABOUT OPCEN. HE
19 WAS NICE. I THINK JEFF FISCHER CAME TO SPEAK ABOUT OPCEN AS
20 WELL. HE WAS NICE. WE HAVE GUYS FROM OPCEN THAT CAME TO
21 PRESENT TO US IN CLASS AND THEY WERE ALL VERY PROFESSIONAL
22 ABOUT OPCEN BEING, YOU KNOW, A GOOD UNIT TO WORK IN.

23 BUT I THINK THAT THE WHOLE NOTION OF OPCEN BE THE PLACE
24 YOU SHOULDN'T WANT TO BE WAS FROM GUYS THAT HAD WORKED IN
25 OPCEN AND THAT TRANSFERRED OUT OF OPCEN, AND THEY SAY, WELL,

1 THAT'S... YOU DON'T WANT TO BE THERE.

2 Q. YOU MENTIONED SOMEONE NAMED GRAYSON; IS THAT RIGHT?

3 A. YES.

4 Q. WHAT'S HIS LAST NAME?

5 A. HILDERBRAND.

6 Q. GRAYSON HILDERBRAND?

7 A. YES.

8 Q. AND HE CAME AND GAVE A PRESENTATION ABOUT OPCEN; IS THAT
9 RIGHT?

10 A. YES.

11 Q. IS IT FAIR TO SAY THAT YOU DIDN'T KNOW TOO MUCH ABOUT EACH
12 DEPARTMENT WHEN YOU WERE BEING ASKED TO RANK WHERE YOU WANTED
13 TO GO?

14 A. SO I'VE WORKED IN THE INDUSTRY AND I HAVE LIKE AN IDEA OF
15 WHAT EACH UNIT DOES, BUT I DIDN'T THINK IT WAS FAIR TO ASK
16 ANYONE TO PICK WHERE THEY WANT TO GO TO BECAUSE THERE IS NO
17 WAY YOU CAN KNOW WHAT TO EXPECT. SO I THINK MOST PEOPLE
18 PICKED BASED ON WHAT THEY HEARD FROM THE GUYS THAT HAVE WORKED
19 IN THE UNITS.

20 Q. WHAT DID YOU PICK FIRST?

21 A. I DON'T REMEMBER EXACTLY.

22 Q. DID YOU PICK --

23 A. I DON'T THINK I PICKED OPCEN. I HAD A PREFERENCE FOR A
24 UNIT I'VE ALWAYS WANTED TO WORK IN THROUGHOUT MY YEARS IN THE
25 INDUSTRY. THAT'S WHAT I PICKED, BUT I DIDN'T GET IT.

1 Q. LET'S TALK ABOUT WHAT HAPPENED AFTER YOU WERE ASSIGNED TO
2 OPCEN. YOU STARTED TRAINING IN THAT UNIT, RIGHT?

3 A. YES.

4 Q. WHO WAS THE PERSON TRAINING YOU?

5 A. THAT WOULD BE JEFF FISCHER.

6 Q. WHO ELSE WAS TRAINING WITH YOU?

7 A. WE HAD CIARA, JOSE, AND PATRICK NEUMAN.

8 Q. THOSE ARE PEOPLE THAT WE LOOKED AT IN THE PHOTOGRAPH,
9 RIGHT?

10 PATRICK NEUMAN WAS ALL THE WAY ON THE RIGHT AND JOSE WAS
11 CROUCHING DOWN IN FRONT?

12 A. UH-HUH.

13 Q. AND THEN, OF COURSE, MS. NEWTON?

14 JUST THE FOUR OF YOU?

15 A. YES.

16 Q. WHEN YOU JOINED OPCEN, WHERE DID THE TRAINING TAKE PLACE?
17 SO WAS IT CLASSROOM TRAINING, WERE YOU IN A UNIT?

18 A. OPCEN HAS A CONFERENCE -- CONFERENCE ROOM IN THE FIELD, SO
19 FIELD CONFERENCE ROOM.

20 Q. SO FIELD AND IN THE CONFERENCE ROOM?

21 A. SO THE -- EVERY DEPARTMENT HAS LIKE AN OFFICE SPACE, LIKE
22 A CONTROL ROOM WHERE -- A PLACE WE STAY IN. OPCEN HAS ONE OF
23 THOSE THAT WE WILL STAY IN. WITHIN THAT, OUTSIDE OF THE DESK
24 ASSIGNED TO OPCEN IN THE CONTROL ROOM, THERE'S A CONFERENCE
25 ROOM IN THERE THAT'S USED FOR MEETINGS. THAT'S WHERE WE WERE

1 TRAINED THERE.

2 Q. DO YOU REMEMBER CIARA EVER BEING LATE FOR ANY OF THE
3 TRAININGS IN THAT CONFERENCE AREA?

4 A. MAYBE A COUPLE OF TIMES, I THINK.

5 Q. DO YOU REMEMBER BEING LATE ANY MORE THAN A COUPLE OF
6 TIMES?

7 A. NO.

8 Q. DID SHE EVER GIVE YOU ANY RIDES EITHER TO WORK OR FROM
9 WORK?

10 A. YES.

11 Q. WAS IT ALWAYS FROM WORK OR ALWAYS TO WORK?

12 A. MOSTLY FROM WORK. SO I WAS DOING -- THIS WAS BEFORE WE
13 WENT TO OPCEN. THIS IS WHEN WE FIRST GOT HIRED AND I WAS OUT
14 OF TOWN. I WAS CLOSE ENOUGH TO TAKE AN UBER TO AND FROM WORK,
15 BUT SHE WAS GOING MY DIRECTION AND SHE OFFERED TO GIVE ME A
16 RIDE.

17 Q. OKAY. DURING -- GOING BACK TO THE CLASSROOM TRAINING,
18 WHAT TIME DURING THAT PORTION OF IT DID YOU GENERALLY ARRIVE
19 AT WORK?

20 A. SO THEY -- THE INITIAL TRAINING WAS FROM 7:00 TO 3:00.
21 THEN AFTER WE GO TO OUR UNITS, I THINK THE FIRST WEEK, WE HAVE
22 THE SAME SCHEDULE. BUT WE HAD A -- WE HAD ANDY GREEN. ANDY
23 GREEN WAS INITIALLY I THINK THE FIRST WEEK, IF I'M NOT
24 MISTAKEN, HE WAS WITH US FOR THE FIRST WEEK. WE KEPT OUR SAME
25 SCHEDULES.

1 AND THEN JEFF FISCHER TOOK OVER. HE WAS GOING TO BE THE
2 OFFICIAL TRAINER. HE TOOK OVER. THEN WE MADE ADJUSTMENTS AT
3 THAT TIME. AND I THINK IT WAS EITHER 6:00 OR 6:30 TO ABOUT
4 2:00 OR 2:30.

5 **Q.** OKAY. AND WHETHER IT WAS 6:00 OR 6:30 TO 2:00 OR 2:30,
6 THAT WAS ALL THE CLASSROOM TRAINING WITH JEFF FISCHER?

7 **A.** RIGHT.

8 **Q.** HOW WOULD YOU DESCRIBE MR. FISCHER'S TRAINING STYLE WITH
9 THE FOUR OF YOU?

10 **A.** TRAINING STYLE?

11 **Q.** YEAH. WHAT WAS HE LIKE?

12 **A.** SO JEFF, WHEN HE FIRST CAME TO SPEAK WITH US, YOU KNOW,
13 WHILE WE WERE -- BEFORE WE CAME TO OPCEN, I THOUGHT HE WAS
14 NICE. HE SEEMED VERY PROFESSIONAL.

15 BUT DURING THE TRAINING PERIOD, I COULD TELL THAT HE
16 WASN'T PATIENT. IT SEEMED LIKE HE DIDN'T WANT TO BE DOING THE
17 JOB. HE EXPRESSED SOME DISAPPOINTMENTS INITIALLY ABOUT THE
18 PEOPLE THAT GOT SENT TO OPCEN FROM THE TRAINING CLASS.

19 **Q.** WHAT DID YOU HEAR HIM SAY THAT LED YOU TO SAY THAT HE
20 EXPRESSED SOME DISAPPOINTMENT INITIALLY ABOUT THE PEOPLE BEING
21 ASSIGNED TO OPCEN?

22 **A.** SO I DON'T -- RIGHT NOW I DON'T REMEMBER ANY SPECIFIC
23 INFORMATION, BUT THERE WAS A TIME HE HAD A LITTLE SHEET OF
24 PAPER WHO INTERVIEWED FOR THE JOB THAT DIDN'T GET IT. AND I
25 GUESS HE SAW THE NAME OF SOMEONE, SOMEONE'S SON, I THINK,

1 MAYBE THAT HE RECOGNIZED. SOMEONE THAT WORKED AT SHELL
2 ALREADY WHO'S SON INTERVIEWED FOR THE JOB AT SHELL AND DIDN'T
3 GET IT. HE EXPRESSED SURPRISE AS, WOW, THAT PERSON DIDN'T GET
4 THE JOB BUT PATRICK NEUMAN GETS THE JOB.

5 SO THAT WAS SAYING, WELL, HOW COULD PATRICK GET THE JOB
6 WHEN THIS GUY'S SON DIDN'T GET THE JOB.

7 **Q.** DID HE SAY ANYTHING ELSE THAT LED YOU TO THINK HE WAS
8 DISAPPOINTED WITH THE PEOPLE THAT ENDED UP IN HIS DEPARTMENT?

9 **A.** I DON'T KNOW IF HE SAID ANY -- I CAN'T REMEMBER ANY
10 SPECIFIC WORDS THAT HE SAID. BUT I KNOW HE HAD, I THINK HE
11 HAD PEOPLE IN MIND HE WAS HOPING WOULD BE SENT TO OPCEN THAT
12 DIDN'T GET SENT TO OPCEN.

13 **Q.** YOU DESCRIBED HIM AS IMPATIENT. WHAT DID HE DO OR WHAT
14 DID YOU OBSERVE THAT LED YOU TO DESCRIBE HIM AS IMPATIENT?

15 **A.** WELL, I HAVE HAD NUMEROUS TRAINING WITH A LOT OF DIFFERENT
16 PEOPLE. I'VE BEEN A TRAINER MYSELF OVER THE YEARS. THE BEST
17 WAY TO KILL, YOU KNOW -- THE BEST WAY TO -- TO -- TO HINDER
18 THE TRAINING PROCESS IS TO... WHEN YOU DON'T ALLOW THE STUDENT
19 TO ASK WHATEVER QUESTION THEY WANT TO ASK, YOU KIND OF HINDER
20 THEIR LEARNING.

21 AND I THOUGHT MAYBE HE TAUGHT US SOME THINGS, HE'S GONE
22 THROUGH SOME THINGS, THERE'S A CHANCE THAT SOMEONE MIGHT STILL
23 NEEDS TO ASK QUESTIONS. EVEN IF IT'S OBVIOUS TO YOU, IT MAY
24 NOT BE OBVIOUS TO THE STUDENT. YOU SHOULD ALLOW THEM TO ASK
25 QUESTIONS AND ANSWER FREELY.

1 HE WAS EMPLOYEES HANDS OFF. IF QUESTIONS GET ASKED AND HE
2 FEELS LIKE YOU SHOULD KNOW THEM ALREADY, HE LIKE THROW HIS
3 HANDS UP AND EXPRESS SOME KIND OF, YOU KNOW, I CAN'T BELIEVE
4 YOU'RE ASKING THAT KIND OF THING.

5 Q. DID YOU EVER SEE HIM DO THAT IN RESPONSE TO A QUESTION
6 THAT MS. NEWTON ASKED?

7 A. YES.

8 Q. AND BEFORE YOU SAID THAT HE DID SOME THINGS THAT HINDERED
9 THE LEARNING; IS THAT THE PHRASE YOU USED?

10 A. I THINK -- YOU CAN'T -- THERE SHOULD BE NO QUESTIONS ASKED
11 THAT'S STUPID. I THINK IF YOU ASK THAT AS A TRAINER, YOU MAKE
12 THEM SCARED TO ASK QUESTIONS FREELY AND OPENLY.

13 AND I THOUGHT HE EXPRESSED THAT AT DIFFERENT POINTS WITH
14 CIARA AND PATRICK.

15 Q. DID YOU EVER HEAR HIM SAY SOMETHING TO THE EFFECT OF, SOME
16 OF YOU WOULDN'T BE HERE IF I DID THE HIRING?

17 A. I CAN'T SAY FOR A FACT I REMEMBER.

18 Q. DID YOU EVER OBSERVE MR. FISCHER TRY TO EMBARRASS
19 MS. NEWTON?

20 A. NOT THAT I CAN RECALL, NO.

21 THE COURT: I COULD NOT HEAR YOU.

22 THE WITNESS: NOT -- I CAN'T RECALL THAT HAPPENING.

23 THE COURT: THANK YOU.

24 BY MS. NUGENT:

25 Q. DID YOU EVER OBSERVE HIM TRY TO INTIMIDATE HER IN ANY WAY

1 OTHER THAN WHAT YOU'VE ALREADY DESCRIBED WITH --

2 **MR. LAFAYETTE:** OBJECTION, ARGUMENTATIVE.

3 **THE COURT:** OVERRULED.

4 **THE WITNESS:** SO I TRIED TO BE -- TO PUT MYSELF IN
5 CIARA'S AND PATRICK'S SHOES, AND I THOUGHT IT WAS VERY HIGH
6 TENSION ENVIRONMENT. I COULD SEE HOW THEY MAY NOT BE AT PEACE
7 COMING TO CLASS TO LEARN BECAUSE OF THE ENVIRONMENT, BUT
8 DIRECTLY INTIMIDATE, NO, I CAN'T SAY I OBSERVED HIM DO THAT.

9 I JUST THOUGHT IT WAS THE ENVIRONMENT THAT IT DIDN'T SEEM
10 TO BE A VERY FRIENDLY ENVIRONMENT FOR SOMEONE THAT HAS NEVER
11 DONE THIS BEFORE.

12 **THE COURT:** SO IT'S 1:00 O'CLOCK. DO YOU HAVE MUCH
13 MORE?

14 **MS. NUGENT:** NO, I DON'T.

15 **THE COURT:** HOW MUCH MORE DO YOU HAVE?

16 **MS. NUGENT:** WELL, I PROBABLY HAVE ANOTHER TEN
17 MINUTES.

18 **THE COURT:** HOW MUCH DO YOU HAVE?

19 **MR. LAFAYETTE:** MAYBE FIVE, YOUR HONOR.

20 **THE COURT:** CAN YOU ALL WAIT ANOTHER 15 MINUTES?
21 DOES ANYONE HAVE TO BE SOMEWHERE?

22 IS THAT OKAY?

23 **MS. NUGENT:** I AM SORRY. I WON'T DO THIS AGAIN. I
24 AM VERY SORRY AND I WILL SPEED IT UP.

25 **THE COURT:** DON'T SPEED IT UP SO THE COURT REPORTER

1 CAN'T TAKE IT DOWN.

2 MS. NUGENT: NOT MY SPEAKING, I WILL SPEED UP THE
3 QUESTIONS.

4 BY MS. NUGENT:

5 Q. DID YOU HEAR MR. FISCHER SAY HE WAS GOING TO QUOTE "WALK
6 SOMEONE TO THE GATE"?

7 A. SO PART OF WHAT I THOUGHT WASN'T VERY PROFESSIONAL IS HE
8 USED EXAMPLES OF HOW PEOPLE HAVE BEEN WALKED TO THE GATE FOR
9 NOT MEETING UP, NOT LEARNING, WHO HAVE BEEN INCOMPETENT.

10 Q. DID YOU EVER HEAR HIM SAY THAT DIRECTLY ABOUT MS. NEWTON,
11 THAT HE WOULD WALK HER TO THE GATE?

12 A. I CAN'T REMEMBER ANY OF THAT, NO.

13 Q. AS PART OF YOUR TRAINING, DID YOU HAVE TO DRAW A MAP OF
14 THE PROCESS OF HP-2?

15 A. YES.

16 Q. THOSE DRAWINGS ARE PRETTY DETAILED, AREN'T THEY?

17 A. YES.

18 Q. THEY TAKE A LONG TIME?

19 A. YEAH.

20 Q. DO YOU RECALL THAT MS. NEWTON'S DRAWING OF THE HP-2
21 PROCESS AT SOME POINT WAS WHITED OFF THE BOARD?

22 A. I MIGHT HAVE HEARD ABOUT THAT, BUT I CAN'T SAY I REMEMBER
23 SPECIFICALLY. IT MAY HAVE HAPPENED.

24 SO, JOSE AND I WERE -- THE CLASS WAS KIND OF SEPARATED
25 INTO TWO AFTER A POINT IN TIME BECAUSE HE SAID HE WANTED TO

1 FOCUS ON CIARA AND PATRICK. SO MY GUESS THAT MAY HAVE
2 HAPPENED WHILE WE WERE SEPARATED.

3 **Q.** WHAT DID YOU HEAR?

4 **MR. LAFAYETTE:** OBJECTION, HEARSAY.

5 **THE COURT:** RESPONSE?

6 A RESPONSE?

7 **MS. NUGENT:** HE WAS IN THE SAME TRAINING CLASS AS
8 THESE FOUR PEOPLE. AND HE SAYS -- I'M TRYING TO TEST THE
9 CERTAINTY OF HIS MEMORY ABOUT THAT AND WHAT HE HEARD ABOUT IT.

10 **MR. LAFAYETTE:** HEARSAY.

11 **THE COURT:** SUSTAINED.

12 **BY MS. NUGENT:**

13 **Q.** DID YOU -- WELL, BASED ON WHAT YOU OBSERVED WHILE TRAINING
14 WITH MS. NEWTON AND YOUR EXPERIENCE IN THE INDUSTRY, DID YOU
15 SEE ANY REASON THAT SHE WASN'T CAPABLE OF BEING A GOOD
16 OPERATOR?

17 **MR. LAFAYETTE:** OBJECTION, LACKING IN FOUNDATION.

18 **THE COURT:** OVERRULED. HE WAS IN THE SAME CLASS.

19 **MR. LAFAYETTE:** MY --

20 **THE COURT:** OVERRULED.

21 **THE WITNESS:** YOU KNOW, I THOUGHT SHE PASSED THE
22 INITIAL TRAINING AND SHE CAME TO CLASS. SHE HAD SOME SETBACKS
23 BECAUSE I THINK SHE WAS GONE FOR MAYBE NINE DAYS TO MAYBE TWO
24 WEEKS. AND SHE CAME BACK, AND SHE STILL MANAGED TO QUALIFY BY
25 THE SAME TIME AS PATRICK WHO HAD BEEN WITH US THROUGH THE

1 WHOLE PERIOD. SO I THOUGHT SHE WAS CAPABLE OF DOING THE JOB.

2 **BY MS. NUGENT:**

3 **Q.** WHEN YOU TALK ABOUT A SETBACK, ARE YOU REFERRING TO HER
4 FATHER DYING --

5 **A.** YES.

6 **Q.** -- AS ONE OF THEM?

7 DID YOU EVER COME IN ON A DAY OFF THAT YOU HAD TO HELP
8 MS. NEWTON TRY TO CATCH UP?

9 **A.** DID I WHAT?

10 **Q.** DID YOU EVER COME IN ON A DAY OFF THAT YOU HAD TO TRY AND
11 HELP MS. NEWTON CATCH UP?

12 **A.** NO, I DON'T REMEMBER THAT HAPPENING. NO.

13 **Q.** DO YOU REMEMBER TRYING TO HELP HER THOUGH --

14 **A.** YES.

15 **Q.** -- TO TRY AND CATCH UP?

16 OKAY. AS PART OF YOUR TRAINING, YOU'VE ALREADY MENTIONED
17 YOU HAVE TO PASS SOME TESTS, RIGHT?

18 **A.** RIGHT.

19 **Q.** IS THERE SOMETHING CALLED A QUALIFICATION CHECKLIST?

20 **A.** YES.

21 **Q.** IF YOU WILL TURN IN YOUR BINDER TO THE OTHER EXHIBIT
22 THAT'S IN THERE, IT'S NO. 137.

23 **A.** OKAY.

24 **THE COURT:** BY THE WAY, IT WAS MY MISTAKE THAT I
25 THOUGHT WE WERE ENDING AT 1:00 INSTEAD OF 1:30.

1 **MS. NUGENT:** WE ARE ENDING AT 1:30, RIGHT, YOUR
2 HONOR?

3 **THE COURT:** YES. I AM SORRY. MY MISTAKE. MY DAY
4 STARTED VERY EARLY TODAY.

5 GO AHEAD.

6 **BY MS. NUGENT:**

7 **Q.** EXHIBIT 137, I WANT TO CALL YOUR ATTENTION TO THE NUMBERS
8 AT THE BOTTOM. AND THERE'S A NUMBER AT THE BOTTOM RIGHT THAT
9 STARTS WITH 5721 AND IT GOES UNTIL 5724.

10 **A.** 57?

11 **Q.** 5721 IS THE FIRST PAGE THAT I WOULD LIKE YOU TO LOOK AT.

12 **A.** I SEE 5682.

13 **THE COURT:** IT'S NOT CHRONOLOGICAL. KEEP GOING
14 TOWARDS THE BACK.

15 **THE WITNESS:** 5721.

16 **BY MS. NUGENT:**

17 **Q.** IF YOU WILL LOOK AT THAT PAGE THROUGH 5724?

18 **A.** OKAY.

19 **Q.** DO YOU RECOGNIZE THAT DOCUMENT?

20 **A.** YES. THIS IS THE PARALLEL TRAINING CHECKLIST IS WHAT WE
21 CALL IT.

22 **Q.** IS THAT YOUR PARALLEL TRAINING CHECKLIST?

23 **A.** IT DOESN'T HAVE MY NAME ON IT, BUT I RECOGNIZE MY WRITING
24 AND DATES. IT'S MY WRITING.

25 **Q.** YOU SAID YOU RECOGNIZE THE WRITING OF THE DATES ON THE

1 TOP?

2 A. YES.

3 Q. SO, FOR EXAMPLE, ON PAGE 5722?

4 A. YES.

5 Q. AT THE TOP THERE'S NUMBERS 04/25/16. THAT'S YOUR WRITING?

6 A. YES.

7 Q. DO YOU HAVE ANY REASON TO BELIEVE THIS IS NOT YOUR
8 PARALLEL TRAINING CHECKLIST?

9 I'LL WITHDRAW THAT QUESTION.

10 THIS IS YOURS, RIGHT?

11 A. I BELIEVE IT IS. THERE'S NOT MANY PEOPLE PUT A ZERO
12 BEFORE THE FOUR. SINGLE DATES, I WRITE THEM WITH DOUBLE
13 DIGITS, 04.

14 Q. IF YOU WILL LOOK ON THE RIGHT-HAND COLUMN UNDER TRAINER'S
15 INITIALS, DO YOU SEE THAT?

16 A. YES.

17 Q. BEFORE WE DO THAT, WHAT IS A PARALLEL TRAINING CHECKLIST?

18 A. SO THIS IS SUPPOSED TO BE AFTER -- I THINK WE DID THIS
19 BEFORE -- AFTER WE DO THE WALK THROUGH.

20 THIS IS WHAT YOU ARE SUPPOSED TO DO BEFORE YOU ACTUALLY
21 CAN OPERATE BY YOURSELF.

22 SO AT THIS POINT YOU HAVE SOMEONE ASSISTING YOU, AND THEY
23 SHOW YOU HOW TO DO THESE TASKS. ONCE YOU'VE DONE IT, THEY CAN
24 SIGN OFF THAT YOU'VE LEARNED IT, SHOWN YOU HOW TO DO IT AND
25 YOU'VE SHOWN COMPETENCE DOING IT, AND THEY SIGN OFF ON IT.

1 Q. THAT'S THE SAME AS BEING QUALIFIED, RIGHT, AS AN OPERATOR?

2 A. THIS IS PART OF WHAT YOU HAVE TO DO TO GET QUALIFIED, YES.

3 MS. NUGENT: YOUR HONOR, I WOULD LIKE TO OFFER 137
4 INTO EVIDENCE.

5 THE COURT: ONLY PAGES 5721 THROUGH 24?

6 MS. NUGENT: THAT'S RIGHT.

7 THE COURT: ANY OBJECTION?

8 MR. LAFAYETTE: NO, YOUR HONOR.

9 THE COURT: IT'S ADMITTED.

10 (PLAINTIFF'S EXHIBIT 137A RECEIVED IN EVIDENCE)

11 IT WILL BE DESIGNATED 137A. WE WILL DEAL WITH THAT
12 SEPARATELY.

13 GO AHEAD.

14 MS. NUGENT: SO LET'S PUBLISH IT AND TAKE A LOOK AT
15 UNDER TRAINERS INITIALS RIGHT-HAND COLUMN.

16 (DISPLAYED ON SCREEN.)

17 BY MS. NUGENT:

18 Q. WE ARE ON PAGE 2 NOW.

19 SO WHILE MR. ETTINGHOFF GETS THERE FOR 5722, I WANT YOU TO
20 LOOK AT THE FIRST BOX UNDER UNIT SPECIFIC TASKS. THERE ARE
21 SOME INITIALS NEXT TO IT.

22 (DISPLAYED ON SCREEN.)

23 DO YOU RECOGNIZE THOSE INITIALS?

24 A. YES, FOR THE MOST PART. JG WOULD BE JASON GONZALEZ.

25 Q. HOW ABOUT CS?

1 **A.** CS IS CHRIS SALAS.

2 **THE COURT:** CS IS WHO?

3 **THE WITNESS:** CHRIS SALAS.

4 **BY MS. NUGENT:**

5 **Q.** CHRIS? AND THEN SALAS, S-A-L-A-S?

6 **A.** YES.

7 **Q.** AND MR. SALAS SIGNED OFF ON SEVERAL OF THE TASKS IN YOUR
8 PARALLEL TRAINING CHECKLIST; IS THAT RIGHT?

9 **A.** YES.

10 **Q.** IF YOU LOOK AT THE NEXT BOX DOWN THERE ARE ALSO HIS
11 INITIALS THERE UNDER SHOW HOW TO ENTER SAMPLE RESULTS IN LIMS?
12 DO YOU SEE THAT?

13 **A.** YEAH.

14 **Q.** OKAY.

15 AND ON THE NEXT PAGE HE SIGNED OFF ON APRIL 27, 2016 ON
16 THREE DIFFERENT AREAS THAT YOU NEEDED TO QUALIFY ON; IS THAT
17 RIGHT?

18 **A.** YES.

19 **Q.** AND, AGAIN, ON THE NEXT DAY HIS INITIALS ARE THERE TWICE
20 ON APRIL 28TH; IS THAT RIGHT?

21 **A.** YES.

22 **Q.** AND THEN AGAIN ON APRIL 30TH, CHRIS SALAS'S INITIALS
23 APPEAR, CORRECT?

24 **A.** CORRECT.

25 **Q.** FROM YOUR EXPERIENCE --

1 **MS. NUGENT:** YOU CAN TAKE THAT DOWN.

2 **BY MS. NUGENT:**

3 **Q.** FROM YOUR EXPERIENCE WORKING AT THE THREE DIFFERENT OIL
4 COMPANIES AND SPECIFICALLY SHELL REFINERY, DO YOU HAVE AN
5 OPINION ON WHETHER IT'S A WELCOMING ATMOSPHERE FOR WOMEN?

6 **MR. LAFAYETTE:** OBJECTION, IMPROPER OPINION, LACKING
7 FOUNDATION.

8 **THE COURT:** SUSTAINED.

9 **BY MS. NUGENT:**

10 **Q.** HOW ABOUT AT OPCEN SINCE YOU'VE BEEN THERE?

11 **MR. LAFAYETTE:** SAME OBJECTION.

12 **THE COURT:** OVERRULED.

13 **THE WITNESS:** THE QUESTION IS DO I THINK IT'S A
14 WELCOMING ENVIRONMENT FOR WOMEN.

15 **BY MS. NUGENT:**

16 **Q.** IN OPCEN.

17 **A.** SO WE'VE HAD WOMEN -- WHEN I FIRST JOINED, WHEN I JOINED
18 OPCEN, THERE WERE WOMEN THAT WORKED IN OPCEN THAT'S BEEN THERE
19 FOR DECADES. SO THAT'S A HARD QUESTION TO ANSWER, I THINK.

20 **Q.** CAN YOU REPEAT THE LAST PART OF YOUR ANSWER?

21 **A.** IT IS A HARD QUESTION FOR ME TO ANSWER.

22 **Q.** WELL, BASED ON YOUR PERCEPTION AND WHAT YOU SAW THERE.

23 **MR. LAFAYETTE:** OBJECTION, LACKING IN FOUNDATION.

24 **THE COURT:** OVERRULED.

25 **THE WITNESS:** YES, SO I'LL SAY SPECIFIC TO OPCEN AT

1 SHELL, I THINK THE INDUSTRY IS VERY MALE DOMINATED. IT'S A
2 MALE-DOMINATED INDUSTRY. AND THE INDUSTRY TRIES TO HAVE SOME
3 DIVERSITY BY BRINGING IN, YOU KNOW, MANY RACES AND WOMEN. AND
4 THIS IS JUST MY OPINION. I THINK IT'S A GOOD INITIATIVE TO
5 HAVE TO WANT TO BRING IN DIVERSITY MEN AND WOMEN, OFTENTIMES
6 IT SEEMS THEY DON'T PREPARE THE PEOPLE WORKING IN THE FIELD
7 FOR THAT CHANGE. AND I FEEL THAT MAYBE THAT'S -- YOU ARE NOT
8 GOING TO GET VERY GOOD RESULTS IF THAT HAPPENS.

9 **Q.** I HAVE ONE LAST QUESTION.

10 DO YOU EVER REMEMBER A SITUATION WHERE SOMETHING HAPPENED
11 IN THE FIELD, AND YOU AND MR. NAVARRO AND MR. NEUMAN WENT TO
12 GO LOOK AT WHAT WAS HAPPENING IN THE FIELD AND MS. NEWTON
13 STAYED BACK IN THE CONFERENCE ROOM?

14 DO YOU REMEMBER A SITUATION LIKE THAT?

15 **A.** YES.

16 **Q.** TELL US ABOUT THAT.

17 **A.** SO THIS WASN'T PART OF OUR TRAINING, IT WASN'T CONSIDERED
18 PART OF OUR TRAINING. IT WAS -- I THINK THERE WAS AN UPSET IN
19 ONE OF THE UNITS, AND PART OF THE UPSET LED TO RELEASE OF
20 STEAM, REALLY HIGH PRESSURE, IT WAS VERY LOUD, VERY NOISY,
21 VERY SCARY IF YOU DON'T KNOW WHAT'S GOING ON.

22 AND SOME OF US WENT OUT THERE TO SEE WHAT WAS GOING ON
23 JUST TO SEE WHAT'S GOING ON AND HELP OUT IF WE CAN. I THINK
24 MAYBE SHE DIDN'T. I PERSONALLY WOULDN'T FAULT HER FOR THAT
25 BECAUSE --

1 **MR. LAFAYETTE:** OBJECTION, YOUR HONOR, IMPROPER
2 OPINION.

3 **THE COURT:** OVERRULED.

4 **THE WITNESS:** I WAS THINKING THAT WASN'T PART OF --
5 GOING OUT THERE WASN'T PART OF OUR TRAINING. AND SINCE WE ARE
6 NOT QUALIFIED ON THE UNIT YET, WE REALLY SHOULDN'T BE OUT
7 THERE, BUT....

8 **BY MS. NUGENT:**

9 **Q.** OKAY.

10 **A.** JUST MY OPINION.

11 **MS. NUGENT:** THANK YOU, MR. EKELEMU. NOTHING
12 FURTHER.

13 **THE COURT:** ALL RIGHT. CROSS?

14 **MR. LAFAYETTE:** YES, YOUR HONOR.

15 **CROSS-EXAMINATION**

16 **BY MR. LAFAYETTE:**

17 **Q.** HELLO.

18 **A.** HI.

19 **Q.** WERE YOU TARDY WHEN YOU WERE WORKING WITH JEFF FISCHER?

20 **A.** I WOULD SAY NO.

21 **Q.** ASIDE FROM MS. NEWTON, DID YOU OBSERVE ANYBODY ELSE IN
22 YOUR CREW BEING TARDY WHEN YOU WERE WORKING WITH JEFF FISCHER?

23 **A.** NO.

24 **Q.** NOW, DID YOU EVER SEE JEFF FISCHER DO ANYTHING WHICH MADE
25 YOU THINK HE HAD A BIAS AGAINST WOMEN?

1 **A.** I'LL HAVE TO SAY NO TO THAT.

2 **Q.** DID YOU EVER HEAR JEFF FISCHER MAKE ANY COMMENTS THAT YOU
3 THOUGHT WERE DISPARAGING OF WOMEN?

4 **A.** NOT THAT I CAN RECALL, NO.

5 **Q.** YOU INDICATED THAT THERE WAS A POINT IN TIME IN WHICH
6 MS. NEWTON HAD LEFT BECAUSE SHE HAD A FAMILY TRAGEDY.
7 REMEMBER THAT?

8 **A.** YES.

9 **Q.** WHEN SHE RETURNED, DID JEFF FISCHER MAKE ANY COMMENTS
10 ABOUT WHAT THE REST OF YOU SHOULD DO, IF ANYTHING, TO ASSIST
11 HER?

12 **A.** I CAN'T REMEMBER IF HE SAID ANYTHING SPECIFICALLY, NO.

13 **Q.** SO THERE'S A POINT IN TIME IN WHICH HE SEPARATED PATRICK
14 NEUMAN AND MS. NEWTON FROM THE OTHER TWO OF YOU?

15 **A.** YES. SO IT WAS AN AGREEMENT HE MADE WITH US BECAUSE HE
16 THOUGHT THEY NEEDED MORE HELP. AND JOSE AND I WERE AHEAD, SO
17 IF HE -- JUST TO KEEP THINGS GOING, WE SHOULD ALLOW HIM TO
18 SPEND MORE TIME WITH THEM AND WE SHOULD GO ON WITH THE
19 TRAINING OURSELVES.

20 **Q.** DID HE SPEND MORE TIME WITH MS. NEWTON AND MR. NEUMAN?

21 **A.** I BELIEVE HE DID, YES.

22 **Q.** SO FROM YOUR OBSERVATIONS OF MR. FISCHER, DID HE TREAT
23 PATRICK NEUMAN AND MS. NEUMAN -- BUTCHERED THAT.

24 DID HE TREAT PATRICK NEUMAN AND MS. NEWTON THE SAME?

25 **A.** YES, AS FAR AS I CAN REMEMBER. YES.

1 Q. DID HE EVER DO ANYTHING THAT MADE YOU THINK HE DIDN'T LIKE
2 MS. NEWTON?

3 A. NOT ANYTHING SPECIFIC I CAN RECALL.

4 Q. DID HE EVER SAY ANYTHING TO YOU THAT MADE YOU THINK HE
5 DIDN'T THINK WOMEN SHOULD BE IN THE REFINERY?

6 A. NOTHING SPECIFICALLY. I CAN'T REMEMBER.

7 Q. AS A TRAINER, DID YOU FIND HIM LAID BACK?

8 A. LAID BACK AS IN?

9 Q. CASUAL.

10 A. YEAH, I THOUGHT HE WAS TO SOME EXTENT. WE DIDN'T
11 ALWAYS -- WE DIDN'T SPEND A HUNDRED PERCENT OF THE TIME
12 TRAINING. WE CHATTED AND TALKED ABOUT DIFFERENT THINGS AT
13 LUNCH MOSTLY.

14 Q. WAS EVERYBODY INVOLVED IN THESE CASUAL CONVERSATIONS?

15 A. SOMETIMES, YEAH.

16 Q. DO YOU KNOW WHAT AN SME IS?

17 A. YES.

18 Q. OKAY. TELL US WHAT THAT IS?

19 A. SUBJECT MATTER EXPERT.

20 Q. SUBJECT MATTER EXPERT?

21 A. YES.

22 Q. SO WHEN YOU FINISHED DOING YOUR PARALLEL TRAINING, WAS IT
23 YOUR UNDERSTANDING THAT YOU HAD TO HAVE AN SME SIGN YOUR
24 PARALLEL TRAINING CHECKLIST?

25 A. YES.

1 Q. IS A SME SOMEONE WHO'S DIFFERENT THAN JUST AN OPERATOR?

2 A. WELL, IT COULDN'T JUST BE ANY OPERATOR. IT HAS TO BE
3 SOMEONE THAT HAS SOME EXPERIENCE DOING THE JOB THEY'RE
4 TRAINING YOU ON.

5 Q. AND DO YOU KNOW WHO IT IS IN THE REFINERY THAT DESIGNATES
6 SOMEONE AS A SUBJECT MATTER EXPERT?

7 A. I HAVE NO IDEA.

8 Q. AT THE TIME THAT YOU TOOK YOUR PARALLEL TRAINING SHEET TO
9 MR. SALAS, DID YOU KNOW IF HE WAS A SME?

10 A. YES, BECAUSE MY STL WAS AWARE THAT SALAS WAS DOING THIS.

11 Q. WHO WAS YOUR STL?

12 A. IAN CHAMBERLAIN.

13 Q. IAN CHAMBERLAIN?

14 A. YES.

15 Q. SO YOU HAD IAN CHAMBERLAIN AS YOUR SHIFT TEAM LEADER?

16 A. YES.

17 Q. WHEN DID HE START BECOMING YOUR SHIFT TEAM LEADER?

18 A. WHEN DID HE START?

19 Q. YES.

20 A. FROM THE START AFTER I LEFT THE TRAINING WITH JEFF.

21 Q. YES.

22 A. I GOT ON SHIFT WITH TEAM 2, AND IAN WAS TEAM 2'S STL.

23 Q. SO DID YOU GO ON SHIFT BEFORE CIARA NEWTON AND PATRICK
24 NEUMAN?

25 A. I DON'T REMEMBER. I THINK MAYBE ABOUT A WEEK OR TWO OF

1 THAT BEFORE THEY JOINED, BUT I KNOW THERE WAS FOUR OF US. AND
2 ALL FOUR OF US WERE SUPPOSED TO ROTATE ON THE SAME UNIT WHILE
3 THE TURNAROUND WAS GOING ON IN OTHER UNITS.

4 Q. SO NOW AFTER YOU WENT ON SHIFT, DO YOU THINK YOU WENT ON
5 SHIFT IN LIKE APRIL, EARLY MAY?

6 A. SOMETIME AROUND THAT PERIOD, YES.

7 Q. FROM THAT POINT ON, DID YOU EVER WORK ON SHIFT WITH
8 MS. NEWTON?

9 A. NO.

10 Q. DID YOU EVER WORK WITH HER AGAIN AFTER YOU LEFT THE
11 TRAINING COURSE?

12 A. SHE WAS ON A DIFFERENT TEAM, SO I DON'T REMEMBER US
13 WORKING THE SAME SHIFT.

14 Q. DO YOU HAVE ANY KNOWLEDGE WHATSOEVER OF HOW WELL OR NOT
15 WELL SHE PERFORMED WHEN SHE WENT ON SHIFT AFTER SHE LEFT THE
16 TRAINING COURSE?

17 A. NOT DIRECTLY, NO. IT WAS ALL JUST THINGS I HEARD.

18 Q. DO YOU KNOW ANYTHING ABOUT WHAT MAY HAVE HAPPENED TO HER
19 AFTER SHE WENT TO THE TRAINING COURSE AND SHE WENT ON SHIFT?

20 A. NOT DIRECTLY.

21 Q. SO MAY, JUNE, JULY, AUGUST, SEPTEMBER, DID YOU WORK WITH
22 HER AT ALL?

23 A. I -- NO. I DON'T THINK WE WORKED ON THE SAME SHIFT.

24 Q. AND FOR MAY, JUNE, JULY, AUGUST, SEPTEMBER, DID YOU EVER
25 SEE HER WORKING, ACTUALLY DOING HER JOB?

1 **A.** NO.

2 **Q.** FOR THOSE SAME MONTHS, DID YOU EVER COME TO HAVE AN
3 UNDERSTANDING AS TO WHETHER OR NOT HER STL'S HAD CONCERNS
4 ABOUT HER PERFORMANCE?

5 **A.** WELL, THEY DIDN'T TELL ME DIRECTLY. IT WAS JUST STUFF I
6 HEARD.

7 **Q.** STUFF THAT YOU HEARD?

8 **A.** YEAH.

9 **Q.** DID THERE COME A POINT IN TIME WHEN MS. NEWTON TRIED TO DO
10 A SHIFT SWAP WITH YOU?

11 **A.** YES.

12 **Q.** WHEN SHE DID THAT, DID YOU SAY OKAY?

13 **A.** I THINK ULTIMATELY I TOLD HER I COULDN'T DO IT BECAUSE I
14 HAD SOME CONFLICTS.

15 **Q.** SO YOU NEVER DID A SHIFT SWAP WITH HER, RIGHT?

16 **A.** NO.

17 **Q.** SO YOU SAID SOMETHING ABOUT WHEN YOU GUYS WENT TO
18 TRAINING; ORIGINALLY IT WASN'T JEFF FISCHER, RIGHT?

19 **A.** NO.

20 **Q.** FOR HOW MANY DAYS WAS IT THAT MR. GREEN WAS YOUR TRAINER?

21 **A.** I DON'T REMEMBER EXACTLY. IT MIGHT HAVE BEEN THREE TO
22 FOUR DAYS, MAYBE A WEEK. I KNOW HE WAS JUST FILLING IN FOR
23 JEFF UNTIL JEFF CAME BACK. I'M NOT SURE IF JEFF WAS ON
24 VACATION OR NOT AT THE PLANT. I DON'T KNOW.

25 **Q.** THANK YOU.

1 BETWEEN THE TIME THAT JEFF -- BETWEEN MR. GREEN AND
2 MR. FISCHER, DID THEY HAVE THE SAME SCHEDULE TIME FOR YOU TO
3 REPORT?

4 **A.** NO.

5 **Q.** IT WAS DIFFERENT?

6 **A.** YES.

7 **Q.** HOW MANY DAYS WAS IT AFTER JEFF FISCHER SHOWED UP THAT YOU
8 BELIEVE THAT YOU BECAME CLEAR ABOUT THE TIME THAT YOU WERE
9 SUPPOSED TO REPORT TO WORK WITH MR. FISCHER?

10 **A.** WE HAVE A NUMBER OF CHANGES TO THE RESUMPTION -- TIME WE
11 CAME TO WORK. THAT CHANGED QUITE A BIT.

12 WE STARTED OUT 7:00 TO 3:00, AND THEN JEFF CAME AND I
13 THINK IT WAS 6:00 OR 6:30, BUT THEN IT WAS FLEXIBLE. BUT THEN
14 HE -- I THINK HE SAID -- WE HAVE USUALLY OPCEN AT THE START OF
15 SHIFT, MIDNIGHT TO 7:00. AND I THINK JEFF SAID ERIC PEREZ
16 WANTED US TO BE PART OF THAT SHIFT THAT STARTS AT 7:00. AND
17 TO DO THAT, YOU HAVE TO COME IN EARLIER THAN 7:00.

18 **Q.** YOU HAVE TO COME IN EARLIER. DID HE SAY 6:00 O'CLOCK YOU
19 GUYS START, AND 6:15 YOU'RE LATE?

20 **A.** SO GENERALLY -- I DON'T REMEMBER HIM SAYING THAT.

21 **Q.** OKAY.

22 **A.** BUT FOR THE SHIFT WORKERS IN OPCEN, I THINK IT IS
23 GENERALLY 6:05 OR SO OR LATER YOU'RE LATE I THINK IS WHAT THE
24 RULE IS.

25 **Q.** OKAY. BUT YOU WERE NEVER LATE, RIGHT?

1 **A.** NOT THAT I REMEMBER, NO.

2 **Q.** AND DID YOU EVER SEE MR. FISCHER TREAT CIARA DIFFERENTLY
3 BECAUSE SHE WAS A WOMAN?

4 **A.** I CAN'T SAY I DID, NO.

5 **MR. LAFAYETTE:** NO FURTHER QUESTIONS, YOUR HONOR.

6 **THE COURT:** RE-EXAMINATION LIMITED TO THE CROSS?

7 **MS. NUGENT:** NOTHING FURTHER.

8 **THE COURT:** ALL RIGHT, SIR, YOU MAY STEP DOWN. THANK
9 YOU.

10 **MS. NUGENT:** YOU CAN LEAVE IT THERE.

11 **THE COURT:** ALL RIGHT. WE HAVE SEVEN MINUTES. DO
12 YOU WANT TO GET STARTED?

13 **MS. NUGENT:** YES. MIGHT AS WELL.

14 **THE COURT:** IS SHE GOING TO CONTINUE TOMORROW?

15 **MS. NUGENT:** YES, SHE IS.

16 **THE COURT:** ALL RIGHT. LET'S GO.

17 **MS. NUGENT:** START NOW. THE PLAINTIFF CALLS
18 CHRISTINE LAYNE TO THE STAND.

19 **THE COURT:** AT LEAST GET THE PRELIMINARIES IN.

20 **MS. NUGENT:** YOU KNOW, ACTUALLY, WE WERE PLANNING TO
21 HAVE ANOTHER WITNESS BEFORE HER IN THE MORNING AND THEN
22 PUTTING HER ON. SO MAYBE WE SHOULD JUST DO THAT.

23 IF YOU WANT TO DOCK US FOR THE SEVEN MINUTES, YOU CAN.

24 **THE COURT:** OKAY. ALL RIGHT, LADIES AND GENTLEMEN,
25 WE ARE GOING TO THEN STOP FOR THE DAY. SO HERE'S MY LONG

1 INSTRUCTION TO YOU.

2 NOW THAT YOU ARE JURORS AND YOU'VE NOW FINALLY HEARD SOME
3 EVIDENCE, RIGHT, IT IS IMPORTANT TO KEEP AN OPEN MIND
4 THROUGHOUT THE TRIAL. AND DO NOT DECIDE WHAT THE VERDICT
5 SHOULD BE UNTIL YOU AND YOUR JURORS FELLOW JURORS HAVE
6 COMPLETED YOUR DELIBERATIONS AT THE END OF THE CASE.

7 BECAUSE YOU MUST DECIDE THIS CASE BASED ONLY ON THE
8 EVIDENCE RECEIVED IN THE CASE AND ON MY INSTRUCTIONS AS TO THE
9 LAW THAT APPLIES, YOU MUST NOT BE EXPOSED TO ANY OTHER
10 INFORMATION ABOUT THE CASE OR TO THE ISSUES IT INVOLVES DURING
11 THE COURSE OF YOUR JURY DUTY. THUS, UNTIL THE END OF THE CASE
12 OR UNLESS I TELL YOU OTHERWISE, DO NOT COMMUNICATE WITH ANYONE
13 IN ANY WAY AND DO NOT LET ANYONE ELSE COMMUNICATE WITH YOU IN
14 ANY WAY ABOUT THE MERITS OF THE CASE OR ANYTHING TO DO WITH
15 IT.

16 THIS INCLUDES DISCUSSING THE CASE IN PERSON, IN WRITING,
17 BY PHONE, ELECTRONIC MEANS, VIA EMAIL TEXT MESSAGING, OR ANY
18 INTERNET CHAT ROOM, BLOG, WEBSITE, OR APPLICATION, INCLUDING
19 BUT NOT BE LIMITED TO FACEBOOK, YOUTUBE, TWITTER, INSTAGRAM,
20 LINKEDIN, SNAP CHAT, OR ANY OTHER FORMS OF SOCIAL MEDIA. THIS
21 APPLIES TO COMMUNICATING WITH YOUR FELLOW JURORS UNTIL I GIVE
22 YOU THE CASE FOR YOUR DELIBERATION. AND IT APPLIES TO
23 COMMUNICATING WITH EVERYONE ELSE INCLUDING YOUR FAMILY
24 MEMBERS, THE EMPLOYER, THE PRESS, THE MEDIA, THE PEOPLE
25 INVOLVED IN THIS TRIAL, ALTHOUGH AS I'VE MENTIONED BEFORE, YOU

1 CAN TELL YOUR FAMILY AND EMPLOYER THAT YOU HAVE BEEN SEATED AS
2 A JUROR.

3 IF YOU ARE APPROACHED IN ANY WAY OR ASKED ABOUT YOUR JURY
4 SERVICE OR ANYTHING TO DO WITH THIS CASE, YOU MUST RESPOND
5 THAT YOU HAVE BEEN ORDERED NOT TO DISCUSS THE CASE AND REPORT
6 THE CONTACT TO THE COURT.

7 BECAUSE YOU WILL RECEIVE ALL THE EVIDENCE AND LEGAL
8 INSTRUCTION BEFORE YOU MAY PROPERLY CONSIDER TO RETURN A
9 VERDICT, DO NOT READ, WATCH, OR LISTEN TO ANY NEWS OR MEDIA
10 ACCOUNTS OR COMMENTARY ABOUT THE CASE OR ANYTHING TO DO WITH
11 IT. ALTHOUGH I HAVE NO INFORMATION THAT THERE WILL BE NEWS
12 REPORTS IN THIS MATTER -- DO I HAVE ANY PRESS IN THIS
13 AUDIENCE? OH, WELL, THEN MAYBE THERE WILL BE. SO IF YOU
14 HAPPEN TO SEE SOMETHING, JUST TURN AWAY FROM IT.

15 DO NOT DO ANY RESEARCH SUCH AS CONSULTING DICTIONARIES,
16 SEARCHING THE INTERNET, OR USING OTHER REFERENCE MATERIALS.
17 DO NOT MAKE ANY INVESTIGATION OR ANY WAY TRY TO LEARN ABOUT
18 THE CASE ON YOUR OWN. DO NOT VISIT OR VIEW ANY PLACE
19 DISCUSSED IN THE CASE. DO NOT USE INTERNET PROGRAMS OR ANY
20 DEVICES TO SEARCH FOR OR VIEW ANY PLACES INVOLVED IN THE
21 TRIAL.

22 WE'VE TALKED ABOUT THE REFINERY. DON'T GO LOOKING IT UP
23 ON THE INTERNET. DON'T GO LOOKING AT PICTURES. DON'T GO
24 RESEARCHING WHAT A PROCESS OPERATOR IS. NONE OF THAT. OKAY?

25 DO NOT DO ANY RESEARCH ABOUT THE CASE, THE LAW, OR THE

1 PEOPLE INVOLVED, INCLUDING THE PARTIES, THE WITNESSES, OR THE
2 LAWYERS UNTIL YOU'VE BEEN EXCUSED AS JURORS.

3 THESE RULES ARE HERE TO PROTECT EACH PARTIES' RIGHT TO
4 HAVE THE CASE DECIDED ONLY ON THE EVIDENCE THAT HAS BEEN
5 PRESENTED HERE IN COURT. WITNESSES TAKE AN OATH TO TELL THE
6 TRUTH. THE ACCURACY OF THEIR TESTIMONY IS TESTED THROUGH THE
7 TRIAL PROCESS.

8 IF YOU DO RESEARCH OR INVESTIGATION OUTSIDE THE COURTROOM
9 OR GAIN ANY INFORMATION THROUGH IMPROPER COMMUNICATIONS, THEN
10 YOUR VERDICT COULD BE INFLUENCED BY INACCURATE, INCOMPLETE, OR
11 MISLEADING INFORMATION THAT WAS NOT TESTED BY THE TRIAL
12 PROCESS.

13 EACH OF THE PARTIES IS ENTITLED TO A FAIR TRIAL AND BY AN
14 IMPARTIAL JURY. AND IF YOU DECIDE THE CASE BASED ON
15 INFORMATION NOT PRESENTED IN THE COURT, YOU WILL HAVE DENIED
16 THE PARTIES A FAIR TRIAL. REMEMBER YOU'VE TAKEN AN OATH TO
17 FOLLOW THESE RULES AND IT IS VERY IMPORTANT THAT YOU DO SO.

18 A JUROR WHO VIOLATES THESE RESTRICTIONS JEOPARDIZES THE
19 FAIRNESS OF THESE PROCEEDINGS. SO IF YOU ARE EXPOSED, AND
20 SOMETIMES IT HAPPENS ACCIDENTALLY, JUST NOTIFY ME SO WE CAN
21 TALK ABOUT IT. OKAY?

22 SO ENJOY YOUR EVENING. SOME OF YOU MAY HAVE WORK TO DO.
23 SOME OF YOU MAY HAVE HOLIDAY SHOPPING TO DO. GO OFF AND DO
24 THAT STUFF AND ENJOY -- AND ENJOY THE EVENING.

25 ONE OTHER QUICK REMINDER OR ONE PIECE OF ADVICE. IT IS

1 HARD WORK BEING A JUROR. YOU WERE LISTENING INTENTLY AND
2 CONSCIENTIOUSLY. SO IF YOU GET HOME AND YOU FIND YOURSELF A
3 LITTLE CRANKY, IT'S BECAUSE YOU'RE TIRED. SO CUT YOUR FAMILY
4 SOME SLACK, DON'T TAKE IT OUT ON ANYONE, JUST RECOGNIZE IT'S
5 BECAUSE YOU'VE BEEN WORKING REALLY HARD. ALL RIGHT?

6 ENJOY YOUR EVENING. WE'LL SEE YOU TOMORROW.

7 **JUROR:** LEAVE THE BINDERS ON THE CHAIR?

8 **THE COURT:** TAKE THEM AND LEAVE THEM IN THE JURY
9 ROOM.

10 SEE YOU TOMORROW. START RIGHT AT 8:30. THANK YOU.

11 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

12 **THE COURT:** OKAY. THE RECORD WILL REFLECT THAT THE
13 JURY IS GONE.

14 I'LL TAKE THAT TIME. I SHORTENED THE INSTRUCTIONS THIS
15 MORNING BECAUSE I WANTED TO GET TO THE EVIDENCE. SO NOW WE
16 ARE ON TIME. 1:30 EXACTLY.

17 ANYTHING THAT ANYONE WANTS TO DISCUSS?

18 **MS. NUGENT:** NOT FOR THE PLAINTIFF.

19 **MR. LAFAYETTE:** NO, YOUR HONOR.

20 **THE COURT:** ALL RIGHT. WE WILL STAND IN RECESS UNTIL
21 8:00 A.M. TOMORROW. THANK YOU.

22 **MS. NUGENT:** THANK YOU, YOUR HONOR.

23 **MR. LAFAYETTE:** THANK YOU.

24
25 (PROCEEDINGS ADJOURNED AT 1:30 P.M.)

1
2
3 **CERTIFICATE OF REPORTER**

4 I, DIANE E. SKILLMAN, OFFICIAL REPORTER FOR THE
5 UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY
6 CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
7 RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

8
9 

10 DIANE E. SKILLMAN, CSR 4909, RPR, FCRR

11 MONDAY, DECEMBER 10, 2018
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